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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA  
AT OMAHA, NEBRASKA

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GUILLERMO HERRERA, III,

Plaintiff,  
v. Case No. 8:15-CV-426-JMG-CRZ

UNION PACIFIC RAILROAD  
COMPANY, a Delaware corporation,

Defendant.

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VIDEO DEPOSITION OF  
SCOTT NICHOLSON

Milwaukee, Wisconsin

August 10, 2016  
8:02 a.m. to 10:37 a.m.

Kim M. Peterson  
Registered Professional Reporter

**MAGNA >**  
LEGAL SERVICES

EXHIBIT NO. 7

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1	A P P E A R A N C E S	1	please swear in the witness.
2	BRENT COON & ASSOCIATES, PC, 3801 East	2	SCOTT NICHOLSON, called as a witness
3	Florida Avenue, Suite 905, Denver, Colorado, 80210, by	3	herein by the Plaintiff, after having
4	MR. JAMES L. COX, JR., jim.cox@bcoonlaw.com, appeared on	4	been first duly sworn, was examined and testified
5	behalf of the Plaintiff.	5	as follows:
6	LAMSON, DUGAN & MURRAY, LLP, 10306	6	EXAMINATION
7	Regency Parkway Drive, Omaha, Nebraska, 68114, by MR.	7	BY MR. COX:
8	DAVID J. SCHMITT, dschmitt@ldmlaw.com, appeared on behalf	8	Q Mr. Nicholson, good morning, sir.
9	of the Defendant.	9	A Good morning.
10	UNION PACIFIC RAILROAD, 1400 W. 52nd	10	Q Would you give me your full name, please.
11	Avenue, Denver, Colorado, 80221, by MR. TERRY N. GARLAND,	11	A Scott William Nicholson.
12	tngarlan@up.com, appeared on behalf of the Defendant.	12	Q And where do you live now?
13		13	A Right now I'm living in Milwaukee.
14	I N D E X	14	Q And at what address?
15	WITNESS EXAMINATION PAGE	15	A I don't have an address. I just stay at motels.
16	SCOTT NICHOLSON By Mr. Cox	4	16 Q Are you employed?
17		17	A I am.
18		18	Q For whom do you work now?
19	E X H I B I T S	19	A Union Pacific.
20	None	20	Q Do you have a permanent address?
21		21	A No, nothing that's my own.
22		22	Q What is your job with the Union Pacific now?
23		23	A Trackman.
24	(The original transcript was sent to Mr. Cox.)	24	Q And are you on a system gang, or what -- what is
25		25	your job with the UP now? I mean, for whom are
	Page 3		Page 5
1	P R O C E E D I N G S	1	you a trackman? Is it a section, a system?
2	VIDEOGRAPHER: We are now on the	2	A Yes, it is -- it is a section job here in
3	record. This begins DVD number one in the	3	Milwaukee. They cover grounds from Sheboygan down
4	deposition of Scott Nicholson in the matter of	4	to Illinois.
5	Guillermo Herrera, III, v. Union Pacific Railroad	5	Q And how long have you been working as a trackman
6	Company, in the United States District Court for	6	for the UP?
7	the District of Nebraska at Omaha, Nebraska, Case	7	A Well, initially when I came to the Track
8	Number 8:15-cv-426-JMG-CRZ.	8	Department I was a trackman for at least two or
9	Today is Wednesday, August 10, 2016.	9	three months. And then after having other various
10	The time is 8:02 a.m. This deposition is being	10	positions, I've been a trackman now since I came
11	taken at 207 East Michigan Street, Milwaukee,	11	back from furlough about three or four months. It
12	Wisconsin, at the request of Brent Coon and	12	was -- Let's see. April? April I want to say
13	Associates.	13	came over here, yeah.
14	The videographer is Jeff Wilhite,	14	Q So when did you first work for the UP?
15	Magna Legal Services. The court reporter is Kim	15	A I initially started working for the UP Railroad
16	Peterson, Magna Legal Services. Will counsel and	16	2010, December 7.
17	the parties present state their appearances and	17	Q All right. And have you been furloughed or laid
18	whom you represent.	18	off as a result of force reduction during that
19	MR. COX: I'm Jim Cox. I'm Guillermo	19	time since 2010?
20	Herrera's lawyer.	20	A That is correct.
21	MR. SCHMITT: Dave Schmitt for Union	21	Q So when you talk about coming back from a furlough
22	Pacific Railroad.	22	in April of 2016, you were furloughed at some
23	MR. GARLAND: Torry Garland for the	23	period of time, reduction in force, and then
24	Defendant Union Pacific Railroad.	24	recalled or able to rebid a job in April of 2016?
25	VIDEOGRAPHER: Will the court reporter	25	A That is correct, sir.

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1	Q All right. I'm going to get a little more into 2 that in a minute. First I want to talk with you 3 about what you've done to prepare for this 4 deposition. Has anyone on the Union Pacific 5 Railroad advised you of Guillermo Herrera's 6 medical condition?	1	Claims Department, an oral or written statement 2 about what had occurred on July 26, 2015?
7	A Yes.	3	A I believe it was Mr. Dietrich that came out to the 4 gang following the incident maybe -- possibly a 5 day or two after. I don't recall exactly when, 6 but it was after the incident on the 26th, and I 7 gave an oral statement to him.
8	Q Who?	8	Q And has the Union Pacific Railroad provided you a 9 copy of that statement to review?
9	A My attorney -- Well, Union Pacific's attorney told 10 me that he may have some heart complications or 11 something of that nature.	10	A They have not.
12	Q All right. What else -- Tell me what you've done 13 to prepare for the deposition. Have you been 14 advised in any other way of any other medical 15 complications that Guillermo Herrera having as a 16 result of the heat injury on July 26, 2015?	11	Q Would a copy of that statement serve to refresh 12 your memory of events that occurred on July 26, 13 2015?
17	A Well, going back to July 26, 2015, I inquired 18 about how he was doing in the months following the 19 incident, and they just said he was still at home. 20 And at one point they said they were just running 21 tests, and that's all -- that's the only answer I 22 ever got.	14	MR. SCHMITT: Object to the form. 15 Foundation. Go ahead.
23	Q And of whom did you make that inquiry?	16	THE WITNESS: No. I have a pretty 17 good memory. I don't -- I don't need it.
24	A Some of his -- his peers, people he roomed with. 25 That was it.	18	BY MR. COX:
		19	Q Okay. Did you ever request of them an opportunity 20 to review your statement to refresh your memory?
		21	MR. SCHMITT: So I think the 22 question -- There's a question pending. He's just 23 asking --
		24	THE WITNESS: I'm thinking back.
		25	MR. SCHMITT: -- did you ever ask
	Page 7		Page 9
1	Q All right. Have you ever spoken to Mr. Herrera 2 since July 26?	1	Justin to send it to you, is all he's asking.
3	A No, sir, I have not.	2	MR. COX: No, that's not what I asked.
4	Q With whom have you spoken prior to this deposition 5 about this deposition? I understand possibly 6 Mr. Schmitt and Mr. Garland. Anyone else? Did 7 you ever speak with a claim agent?	3	MR. SCHMITT: Oh.
8	A A claim agent?	4	BY MR. COX:
9	Q A risk management person. For example, Bill 10 Herring, or someone like that, who's from the 11 Claims Department, a manager of claims?	5	Q I asked if you've ever asked of anyone in the UP 6 an opportunity to review your statement?
12	A When you say risk management, I did speak with a 13 Doug Dietrich.	7	A I really can't remember ever asking. That's why 8 it was taking me so long to answer.
14	Q Was it Doug Dietrich or Justin Dietrich?	9	Q All right. What is your age, sir?
15	A Justin. It is Justin. My apologies.	10	A Thirty-two.
16	Q No problem. When did you speak with Mr. Dietrich?	11	Q And can you tell me a little bit about where you 12 were born and raised?
17	A Following the incident and correspondence -- well, 18 not correspondence, but via voice mails just 19 setting up this deposition process.	13	A I was born in Omaha, Nebraska. I was raised in 14 Westgate.
20	Q Okay. Did Mr. Dietrich in any fashion advise you 21 of anything that would affect your testimony here 22 today?	15	Q Did you attend high school in Omaha?
23	A He did not. We stayed on the surface. It was 24 just always about when and where.	16	A I did.
25	Q Did you give Mr. Dietrich, or anyone else from the	17	Q Did you graduate from high school?
		18	A I did.
		19	Q And did you have any education after high school?
		20	A I tried to take some college courses, but between 21 being a parent and working for the railroad it 22 just -- it wasn't -- it wasn't in the cards. I tried, but I wanted to make sure that my focus was on my job first and that I wasn't giving them -- to make sure that I was giving them the attention

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1	the job deserved.	1	chipper all day in extreme heat. Unless it gets
2	Q Tell me about your employment before going to work	2	over, I think it's 104, we continue to work.
3	for the Union Pacific in 2010. What jobs did you	3	Q Is that 104 degrees, or 104 heat index?
4	have?	4	A Just the degrees. Yeah, I think it was 106 is --
5	A I actually worked for -- Before 2010. I worked	5	If my memory serves me right, it was like 106 was
6	for Terry Hughes Tree Service.	6	the only time we ever called a day early, but we
7	Q What did you do for Terry Hughes Tree Service?	7	still worked in the morning.
8	A Trimmed and removed trees.	8	Q Tell me again when you began to work for the Union
9	Q Any other jobs you can think of?	9	Pacific Railroad.
10	A Well, before that I was in Texas. I lived there.	10	A 2010, December 7 was my hire date.
11	Family owned a piece of property in the hill	11	Q Where did you go to work for the UP?
12	country, and I trimmed trees there as well, but --	12	A Utah.
13	Q Sort of for your family on their property?	13	Q And at what position?
14	A No, sir. No, sir. It was kind of like a mom/pop	14	A Signal helper.
15	operation. Me and this fella around there just	15	Q And did you remain in the Signal Department?
16	did it locally.	16	A I did not.
17	Q Any other employment that you can think of before	17	Q Why not?
18	going to work for the UP in 2010?	18	A Because it's a temporary position. It was a
19	A Yeah. I mean, I can -- Cornerstone Christian	19	five-year agreement.
20	Retreat Center. That's in Tarpley, Texas.	20	Q I'm not sure I understand what I heard you say.
21	Q What did you do there?	21	A They needed help for a -- a -- a national project
22	A Grounds maintenance on 200 acres for a retreat	22	called PTC. Basically, the ability to track
23	center. I also worked at Lowes. I made the	23	trains by satellite to prevent collisions.
24	transition from Omaha to Texas as I transferred as	24	Q Right.
25	an associate out in the lawn and garden. I worked	25	A And they needed extra help. Some railroads
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1	my way up to team lead in Omaha, and then when I	1	contracted it and some hired some on directly, and
2	transferred down to Texas I was just a regular	2	was I was one of the people hired on directly
3	associate outside.	3	under the -- under the understanding that it's a
4	Q And by an associate at Lowes you mean a -- if I	4	five-year contract, that it's temporary work. If
5	were to go in to Lowes and I would run into a	5	you look at my status, when I was hired it was
6	salesperson on the floor, is that -- was that what	6	temporary.
7	a person like you would do?	7	Q I see. All right. And how long did you do that?
8	A Sales associate, yes, sir. Customer service. Not	8	A Rounding the base to four years, I want to say. I
9	in the customer service area, but out in the lawn	9	don't know if that's exactly accurate, but at
10	and garden.	10	least three years.
11	Q All right. In any of those jobs had you received	11	Q Then what job -- Did you remain a signal helper
12	any formal training regarding heat injury	12	during that period of time?
13	prevention, recognition or treatment?	13	A I did. I did, Mr. Cox.
14	A Can you repeat the question, please?	14	Q And that's essentially physical labor, right?
15	Q Sure. In any of the jobs that you've told us	15	A It is.
16	about, did you ever receive any formal training	16	Q What other jobs have you had for the Union Pacific
17	from any of those companies for which you worked	17	since 2010?
18	regarding heat injury prevention, recognition or	18	A So I was a signal helper. Then I was a trackman
19	treatment?	19	when I transferred over to the Maintenance
20	A I don't remember. I know some stuff, but I don't	20	Department. Within that couple months of doing
21	remember if I had the formal training or whatnot,	21	section work I also retained a qualification for a
22	but we had systems in place to deal with	22	grapple truck.
23	heat-related stress.	23	Q For a what?
24	Q At what company?	24	A A grapple truck. It's like a -- Some people call
25	A Terry Hughes. I'm literally dragging trees to a	25	it a boom truck. A grapple truck would probably

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1	describe it better. It's just a -- basically, an 2 automated arm. Pick up stuff, ties, rail, put 3 ties in in a section setting.	1	A Yes, sir. Usually at work, yeah. 2 Q When you got the bid in August of 2014 for 3 assistant foreman, had you taken the two-hour 4 slide show, or did you take it within 45 days of 5 having had your bid accepted?
4	So going forward, after I got those 5 rights I went back to a trackman, but out on the 6 system gangs because it's a -- a different 7 division, different deal. So -- So trackman, got 8 my trackman rights. And then from there I bid a 9 assistant foreman position.	6	A I don't remember. 7 Q All right. What other training have you received 8 regarding how to be a assistant foreman?
10	Q When did you first bid an assistant foreman 11 position?	9	A In regards to an assistant foreman, you have the 10 computer-based training and then at our what they 11 call startups or our annual meetings, we all take 12 tests and they are -- they're instructor led and 13 there -- there is no -- you know, you -- you need 14 to -- it's individual to you. You need to pass 15 it, but we have in each category of, I guess, 16 critical red zone areas, we have tests that we 17 take to see if you can be qualified, and EIC is 18 one of them.
16	Q When did you first hold a position as an assistant 17 foreman?	19	To be the employee in charge you have 20 to pass a series of tests in each category of 21 railroading, if I can word it like that. You 22 know, lookout protection, on-track safety, 23 flagging protection in the event there's an 24 emergency and a train -- you know, how to flag 25 them down properly. So you have that training.
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1	a bid in for the job and -- yeah.	1	And then -- I'm not -- It's above my 2 pay grade to say what the standard is for a 3 manager or an RSA, but I did have a lot of 4 constructive criticism, what they call coaching 5 out there, but not in the terms of punishment, nor 6 did I exhibit unsafe behavior.
2	Q So what qualification or training was required in 3 2014 for one to bid on an assistant foreman's job?	7	It's just that they are constantly 8 checking in with you and -- and asking okay, how 9 are you doing, what are you doing, is there -- And 10 what I really like about the coaching is they ask 11 for my input, what can we do differently, you 12 know. And so it's a very open conversation 13 that -- that really actually is, to me, even more 14 valuable than any of the -- the -- I guess the 15 book training, if you would.
4	A Well, it's -- it's kind of a two-part question 5 there because it's -- you have to qualify within 6 45 days of getting the job, you know. You have 7 to -- You have to demonstrate safe behavior and 8 critical thinking. You can't just walk into it 9 and do whatever you want. You definitely are 10 being observed.	16	Q All right. The CBT training you talked about, the 17 computer-based training, is that the two-hour 18 slide show that you talked about?
11	It's called like 2.13, I believe, 12 and -- and really -- it's very close, and I can 13 get that for you, but I wouldn't be able to say 14 you can quote me on it, but like 2.13 is the 15 foreman's training. It's like -- I think it's 16 like a two-hour, two-to-four-hour slide show 17 presentation going through that you have to take 18 and answer the questions correctly in order to be 19 qualified.	19	A It's a part of it. It's a part of it.
20	Now, some guys have been able to bid a 21 position and still not have that yet, but then 22 they have to take it. Otherwise, you cannot 23 retain that position with UP.	20	Q And what training at the startups? Is that a 21 conversation or a safety briefing or -- When you 22 say that you received some training at startups, 23 I'm not clear what that means.
24	Q And how is that two-hour slide show taken? Is it 25 something you take online?	24	A Okay. Like I said, it's an annual meeting, and 25 it's where they bring together guys in our

		Page 18		Page 20
1	department, say a couple gangs, in like a hotel in		1	I don't remember the exact date.
2	the conference room. And one day will be, you		2	July of '15?
3	know, what -- what our -- what our mission as a		3	Yes, sir.
4	company is, we'll talk about that. That will be		4	All right. And obviously, it was before July 26,
5	our opening day.		5	2015. You just don't remember what day in July
6	And then depending upon what group you		6	you joined 8501?
7	are, and kind of what -- tailor made to what you		7	Yeah, I don't remember the exact date. I mean, I
8	need is how your day's going to go the next three		8	was only there that week and the week of the
9	days. Like I said, like, for instance, foreman's		9	incident, and I was fairly new to the gang. Not
10	training, it's not -- it's not training for		10	fairly. I was new to the gang, yes.
11	someone who's not a foreman, right. So you'll get		11	So I'm clear, you had been on 8501. Give me an
12	different computer-based training if you're not a		12	estimate of how many days before July 26. When
13	foreman.		13	you say week of, that kind of confuses me. I need
14	So during those startups they have		14	to know you best estimate, best memory.
15	stuff that is mandatory for everybody, and that's		15	A I was only there for two days because I combed
16	like going into polluting waterways, asbestos,		16	through the events that happened, and that
17	random stuff like that that is not only law, it's		17	happened over two days, so. The 26th was the
18	ethical. You know, it's kind of ethics training,		18	incident?
19	you know, as far as what's good business practice		19	Q That's the day that Guillermo was put in Bobby
20	out there on the tracks.		20	Herrera's van.
21	Q The employee in charge training, that's for		21	A Okay. Then the -- Yeah, the day prior would have
22	everyone, isn't it, on the gang in case they are		22	been my first day, the 25th, yeah.
23	designated as the employee in charge when a		23	Q And your first day on 8501 you -- what job were
24	foreman or assistant foreman is leading the gang?		24	you assigned?
25	A I'm sorry. Say that again.		25	A Assistant foreman.
		Page 19		Page 21
1	Q Who receives the employee in charge training?		1	Q And is that the assistant foreman of the quality
2	A When we're in our startups everybody takes it, but		2	control or Cleanup Gang, as it's called?
3	not everybody passes.		3	A Yes, sir.
4	Q Okay.		4	Q Mr. Nicholson, I'm handing you the originals of
5	A Because it's just good to have that -- that		5	the exhibits that we've taken so far, and I'm
6	reinforcement. It's good to come in contact with		6	going to ask you to look at -- Do you see how
7	that information, you know.		7	they're tabbed? If you could open that up.
8	Q When did you first -- How often have you worked in		8	If you could look at Exhibit 4. And
9	the position of assistant foreman since August of		9	do you recognize this as a job briefing 8501 work
10	2010? I'm sorry. August of 2014 I think you told		10	group form? Are you familiar with this form?
11	me. What was your assistant foreman date?		11	A I am familiar with this form, sir.
12	A My assistant foreman date was August of 2014, and		12	Q If you go to the middle, you see that it
13	I held that position without incident until --		13	designates the various foremen; Hugo Calvillo,
14	it's going to be approximate, but pretty accurate,		14	Adam Taylor, Sugar, Charles Turner. You see where
15	September of 2015.		15	I am?
16	Q And you said you held that position without		16	A I do. I do.
17	incident until September of 2015. Was that on		17	Q And then on Number 5 it's got John Vegas, and John
18	Gang 8501?		18	Vegas' name is scratched out and the word Scott
19	A No, sir.		19	written in under quality.
20	Q When did you leave -- When did you join -- You		20	A Um-hum.
21	know what I mean by Gang 8501? That's the gang --		21	Q So that's the Quality Control Gang?
22	A I do, sir. I'm on the same page as you.		22	A Yes, sir.
23	Q When did you join Gang 8501?		23	Q And can you explain, or do you -- if you know, why
24	A Sometime in July.		24	were you substituted for John Vegas on the Quality
25	Q July --		25	Control Gang?

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1	A I don't know.	1	me? And I want to know before -- Well, that's a
2	Q Was John Vegas there?	2	good point. Let me lay a little more foundation
3	A He was.	3	here.
4	Q Was he no longer the foreman, or was he the	4	You told me that you had worked -- or
5	foreman and you're the assistant foreman?	5	that you held the position of assistant foreman
6	A He's -- He's -- He's always an assistant foreman.	6	without incident until September of 2015. Was
7	Q All right. Was he an assistant foreman on the	7	that on 8501?
8	Quality or -- and Control Gang, the Cleanup Gang	8	A I want to make a correction there. I guess,
9	that day --	9	Guillermo's deal would have been an incident, but
10	A No.	10	what I meant by that was is that I didn't have
11	Q -- or were you?	11	anything else, as far as anybody in my group for
12	A No, I was.	12	that year with any issues. That's kind of -- I
13	Q Is this the first day, July 25th, is that the	13	guess I worded that wrong now that you repeat it.
14	first day you had worked on Gang 8501? I know for	14	Q Okay. Clarify that for me.
15	this -- I'm asking is it possible sometime in '14	15	A Yes. Without incident means I did not have any
16	or '15 that you had worked on 8501?	16	injuries or anything within my work group for that
17	A No, sir.	17	year that I retained an assistant foreman
18	Q First time on 8501.	18	position.
19	A Yeah. I came from a -- a Curve Gang.	19	Guillermo would have been the first.
20	Q Okay. Now, let's -- let's talk a little bit	20	I used the wrong word when I say incident. There
21	about -- 8501, the gang you were working on on	21	was nothing formally on my record of having any
22	July 26, is a Steel Gang.	22	issues with my performance.
23	A Um-hum.	23	Q Okay. You had received that coaching that you
24	Q Is that the correct term?	24	described earlier.
25	A Yes, sir.	25	A Everybody does.
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1	MR. GARLAND: Mr. Nicholson, let me	1	Q Now, from -- am I correct that you worked on the
2	just advise you don't um-hum or ugh-ugh. Answer	2	Steel Gang 8501 from July 25, 2015 until sometime
3	audibly yes, no.	3	in September of 2015? Because I had asked you how
4	THE WITNESS: Okay.	4	long did you work on 8501 as assistant foreman,
5	BY MR. COX:	5	and you said you held that position without
6	Q And just to abbreviate this because the jury will	6	incident until September of '15.
7	have a lot of sense of this, a Steel Gang is a	7	A No, I did not. What I said to you was is that I
8	gang that lays rail.	8	was an assistant foreman from August of 2014 to
9	A Yes.	9	about September of 2015 aside from, and this is
10	Q All right. A Curve Gang does what?	10	the correction I made just a moment ago. Aside
11	A It lays rail on curves.	11	from the incident, and I used the wrong word when
12	Q And on the work on the Curve Gang had you worked	12	I said incident, aside from the incident with
13	on wood ties?	13	Guillermo, now that I'm rectifying it, I didn't
14	A Yes.	14	have any complications with anyone.
15	Q Had you worked on concrete ties before going to	15	Q Okay.
16	work on Gang 8501 on July 25th?	16	A As far as any injuries within my work group.
17	A No.	17	Q Forgive me. I may not have been clear. I just
18	Q So the first time -- So I'm clear, the first time	18	want to know for what period of time you worked on
19	you had ever worked on a Steel Gang working on	19	8501 as a -- as an assistant foreman.
20	concrete ties was on July 25th, 2015.	20	A Okay, yeah. So that -- that would be what you
21	A Yes, you would be correct, Mr. Cox.	21	initially said. And that is that I was there from
22	Q All right. Let's talk a little bit about what	22	July 25th, I think we narrowed it down, yeah, to
23	education or training you've received from the	23	September, and I don't have an actual day that I
24	Union Pacific Railroad regarding prevention of	24	left the gang. I do not remember.
25	heat-related illness. Can you describe that for	25	I just -- I remember -- I have a vague

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<p>1 thought I was like October or -- I don't know if      2 I'll be here in October or not, and I know I was      3 gone long before then. Just something stuck out      4 in my mind, you know, there was like an event I      5 wanted to go to in the area or something. So I      6 know I was gone before then. It's literally been      7 over a year since then.</p> <p>8 Q All right. And why did you leave the assistant      9 foreman position on 8501 in September of '15?</p> <p>10 A I would say curiosity. I wanted to learn more      11 crafts within the craft I'm in.</p> <p>12 You know, you get to observe as an      13 assistant foreman. You know, your job is to keep      14 everybody safe and to provide OTS and radio      15 communication, but you don't get the hands-on in      16 some aspects. And so I wanted to -- I wanted to      17 do some welding, but it just didn't work out      18 because I bid a welder helper position and      19 somebody else had an interruption in their      20 service, so I was bumped before I could even get      21 the position.</p> <p>22 Q All right. To what job -- Strike that. Did you      23 move in September of '15 to another job on the UP?</p> <p>24 A No.</p> <p>25 Q Why not?</p>	<p>1 or something to that nature, but that -- I bid      2 a -- a regulator.</p> <p>3 And that draws into we -- we got on a      4 tangent, and that was my last rights that I hold.      5 You asked what, you know, what else have I done      6 here for the railroad. That was the last one,      7 just to sum up that section of the deposition we      8 were talking about. That's all.</p> <p>9 So -- So going back through that,      10 that's going to be a trackman, that's going to be      11 a -- well, a signal helper, a trackman, a grapple      12 truck driver, assistant foreman, and what they      13 reference that machine, the regulator, a TMO date,      14 a machine operator.</p> <p>15 That -- And that's when it all, like      16 you had said about the furloughs, that's when they      17 shut down, they had a reduction, and that gang was      18 abolished, and that's when I went into furlough.</p> <p>19 Q Okay. Thank you for all of that explanation, but      20 what I'm interested in is when you left 8501 in      21 September of 2015 were you bumped?</p> <p>22 A When I left the 8501? Yeah, I absolutely was.</p> <p>23 Q Okay. You told me you left because of curiosity,      24 but what happened was someone bumped you.</p> <p>25 A You know, I guess I dug a little deeper than I</p>
Page 27	Page 29
<p>1 A Because somebody else had already bumped me from      2 the position that I was supposed to retain. And      3 so what I did was once that happened, of course      4 I want to work and -- and I'm comfortable as an      5 assistant foreman. So I stayed there as an      6 assistant foreman for like -- well, once I was      7 bumped, I left. That's -- That's what I did.</p> <p>8 But I still, you know what I mean,      9 like I got bumped what would have been my first      10 day to show up at that welder helper job. And so      11 in -- the standard is when you are in this Union      12 agreement is that you have 14 days to place      13 yourself after you are bumped.</p> <p>14 That being said, I can catch a bid, I      15 could do that, within the next couple weeks to      16 come, hopefully, but if I don't, I have 14 days to      17 go to my bump list, review my bump list, and then      18 go ahead and bump in.</p> <p>19 I ended up catching a bid. Yeah, I      20 didn't even have to bump in, which no one likes to      21 bump in because essentially you're removing      22 somebody from, you know, from their position. And      23 so I caught a bid, and it was in Wisconsin, very      24 nearby. I'm going to -- I always mispronounce it      25 because it's French, but Eau Claire or Eau Claire</p>	<p>1 needed to into your question. I thought you were      2 asking me why I would bid another job. The reason      3 why -- but what you're asking me, Mr. Cox, is why      4 I left the 8501?</p> <p>5 Q Yes, sir.</p> <p>6 A Okay. Yeah, because -- because I was bumped.</p> <p>7 Q Okay. Now, I'm going to summarize that a little      8 bit, in the interest of time, because I think by      9 now the jury will understand it, but based on the      10 seniority roster in the Union Pacific Railroad,      11 when a person gets a date on that seniority roster      12 he can bump a person with less seniority out of a      13 position, and that person that is bumped then has      14 14 days within which to bump into a new position      15 if his seniority permits. Is that a fair summary      16 of it?</p> <p>17 A There was something in the beginning of that      18 statement I'm going to need you to repeat.</p> <p>19 Q Okay. Well, why don't you explain it to us then,      20 how bumping and bidding works on the UP.</p> <p>21 A I need to know the question.</p> <p>22 Q Sure. How does bumping and bidding work on the      23 UP? You said you were bumped out of the assistant      24 foreman job on 8501 in September of '15. You had      25 14 days within which to place yourself, bid on</p>

<p style="text-align: right;">Page 30</p> <p>1 another job. Explain that to the jury.</p> <p>2 A Okay. Okay. I did already summarize it, but I 3 just want to make sure that I'm addressing your 4 question.</p> <p>5 Now that it's vague you're going to 6 open it up so that I can explain it the way that 7 you just asked the question. That is, how does 8 bumping and bidding work. Before you had asked me 9 a series of questions leading up to what I was 10 going to answer, and that's why I asked you to 11 repeat it because the first question was a lot 12 different.</p> <p>13 How bumping and bidding works is Union 14 Pacific has a bid line that we have to sign in to, 15 and we can review what jobs, provided we hold 16 the -- the -- even the -- the rights to work in 17 that area, because we have different agreements. 18 Like where I'm at right now, that's what they call 19 the old C&amp;W agreement. And I'm sorry to go on a 20 tangent, but you asked for an explanation of 21 bumping and bidding.</p> <p>22 Q Yeah. Let -- I don't mean to interrupt you. I 23 think the jury will have an understand of the 24 bidding and bumping.</p> <p>25 I just wanted to -- Let me just</p>	<p style="text-align: right;">Page 32</p> <p>1 Q It is now, but I'm not sure why you relinquished 2 your right as an assistant foreman. I understand 3 it was to bump in as a -- attempt to bump in as a 4 welder helper. If you couldn't bump in as a 5 welder helper, have you already relinquished your 6 assistant foreman job and not able to go back to 7 that job?</p> <p>8 A If you've already relinquished your rights as an 9 assistant foreman --</p> <p>10 Q Right.</p> <p>11 A -- you cannot go back to an assistant foreman?</p> <p>12 Q That's what I'm asking. Here's my question. Let 13 me make it a little more simple.</p> <p>14 When you learned that the welder 15 helper job had been taken by someone with more 16 seniority, did you go back or attempt to go back 17 and as assistant foreman?</p> <p>18 A No. No. I -- I had that 14-day window to 19 exercise my seniority elsewhere, which never 20 happened. I ended up catching a bid on a -- on a 21 regulator.</p> <p>22 Q Okay.</p> <p>23 A Um-hum. Sorry about that.</p> <p>24 Q As a result of the injury to Guillermo Herrera on 25 August 20 -- on July 26, 2015, did you -- did</p>
<p style="text-align: right;">Page 31</p> <p>1 summarize so I'm clear I understand. In September 2 of 2015 a person with more seniority as an 3 assistant foreman bumped you off the assistant 4 foreman position on 8501.</p> <p>5 A No.</p> <p>6 Q No. How is it that you were bumped off of the 7 8501?</p> <p>8 A I'm not sure how to tell you differently. I've 9 already told you. The -- The -- I -- Like I said, 10 I had a curiosity about welding. So I actually 11 bid a welder helper position on the same gang, on 12 the 8501. Do you understand?</p> <p>13 Q I do now.</p> <p>14 A Okay. When I was supposed to relinquish my job as 15 an assistant foreman to be a welder helper, there 16 was already another welder within the gang that 17 had -- either his job had either been abolished, I 18 don't know the story, or that he got bumped 19 himself.</p> <p>20 So he bumped me. His 14-day window 21 was open, so he bumped me the first day I was even 22 supposed to step into my role as a welder helper, 23 opening my 14-day window.</p> <p>24 Q Okay.</p> <p>25 A Is that clear?</p>	<p style="text-align: right;">Page 33</p> <p>1 anyone in management or a supervisory role talk 2 with you about what had happened in the day or 3 days following?</p> <p>4 A About the in particular incident? No. I --</p> <p>5 MR. SCHMITT: You've answered the 6 question, yeah.</p> <p>7 MR. COX: No, but let's -- I guess 8 he'll decide when he's through with his answer.</p> <p>9 MR. SCHMITT: Well, I mean, for 10 purposes of the deposition, I mean, you just need 11 to answer the questions that are there.</p> <p>12 THE WITNESS: No, they didn't.</p> <p>13 MR. SCHMITT: If he wants further 14 explanation, then he'll ask.</p> <p>15 BY MR. COX:</p> <p>16 Q We know you talked with Justin Dietrich and give 17 him a --</p> <p>18 A That's where I was going with it.</p> <p>19 Q Okay. Did your ever talk with Mr. Rolow, 20 Mr. Diaz, any other foreman about what had 21 happened, or why it had happened, or what could be 22 done to prevent it from happening again? Did 23 anyone, any supervisor ever talk with you about 24 that?</p> <p>25 A No.</p>

	Page 34		Page 36
1	Q Were you given any coaching or any discipline or 2 any -- anything as a result of the injury to 3 Guillermo Herrera?	1	So I was making sure that I was still 2 sweating, taking my water breaks accordingly, make 3 sure that I've got the, you know, you know, one an 4 hour, and depending upon the index how much time I 5 take and stuff like that.
4	A No, I wasn't.	6	And for me, a big hitter for me is I 7 make sure my electrolytes are up. That's huge. 8 But no, I've -- I've sweated so much it's not even 9 funny, but I'm totally on a tangent here.
5	Q Other than Justin Dietrich, did any of those 6 supervisors on that gang or directors of that gang 7 ever ask you what had happened --	10	The question at hand is my training. 11 So I've had that summer spike, stand down, signed 12 off on, since 2010. And then as far as 13 heat-related injuries, we're just always talking 14 about it, like always talking about the heat, what 15 we're going to do, buddy systems. Knowing your 16 own limitations is a huge one. That's -- 17 That's -- I mean, at the end of the day that's -- 18 that's -- that's the one that I wish -- I wish 19 there was some way around that, you know, that we 20 could know better, but there's not, you know. I 21 mean, you got to know your own limitations, you 22 know.
12	Q Tell me what education or training regarding the 13 prevention of heat-related illness you received 14 from the Union Pacific Railroad before July 26, 15 2015.	23	Someone can appear just fine on the 24 outside and not be, you know, so. And I think 25 there's a lot of different factors that come into
16	You understand that I can obtain from 17 the UP your training history. I haven't done that 18 yet, but I'm just interested in your training 19 history on the UP before July 26, 2015. What 20 education or training did you receive from the UP 21 regarding the prevention of heat-related illness?		Page 37
22	A Going back to 2010, every summar, and with the 23 Signal Department it's even more intimate, we have 24 a safety meeting all day long for each day of the 25 month. You know -- or not each day of the month.	1	that, you know. I mean, how good of shape you're 2 in, if you're sleeping enough, what you're eating, 3 if you're drinking the night before. We talk a 4 lot about hydration. Hydration doesn't start in 5 the morning when you get to the job. It's a part 6 of it, but it starts the night before.
1	That's completely worded wrong.	7	So your whole -- your whole job is 8 important on and off the railroad to prevent 9 injuries. You have to be very well hydrated to be 10 out there, and especially in those extremes. And 11 I think the railroad's done a good job of 12 educating not only me, but everyone else on that.
2	For one day out of the month we put 3 aside for safety. We meet in a hotel room and we 4 would have, you know, safety -- you know, we would 5 actually read what's going on within the company 6 and we have an actual safety briefing sent out to 7 us from -- probably our directors or above, and -- 8 but that drawing -- that draws into your question.	13	Q All right. Now, a couple of things that you said 14 were interesting to me. You said a big hitter for 15 you is to keep your electrolytes up. What do you 16 mean by that?
9	The QS7, the heat stress awareness, 10 they call it the summer spike. They're looking 11 out for these heat-related injuries to prevent 12 them. And I have -- I have taken and signed off 13 on that training ever since 2010. It's a 14 requirement. They would come find me out on the 15 tracks and I would not even be allowed to be out 16 there, let alone in an assistant foreman position.	17	A Drink Gatorade. It has electrolytes.
17	So that QS7 was taken annually since 18 2010, and if you can obtain those records, you 19 know, then -- yeah, it's there. I've taken that 20 every year.	18	Q Okay. And you referenced a buddy system. What is 19 a buddy system?
21	And as you indicated, I was a signal 22 helper doing manual labor, so it was even more 23 important that I pay attention because I literally 24 was digging trenches all day knee-deep in extreme 25 temperatures.	20	A Is to be hyperaware of your surroundings. 21 Mitigate the risk of unsafe behavior. Make it 22 less severe.
		23	And so, you know, if you come there 24 and you're only thinking about what your job is 25 and you're not -- you're not looking over there

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<p>1 and seeing that, you know, John Doe isn't sweating      2 and he looks tired and he looks like -- lethargic,      3 to go and engage him and make sure that he's okay,      4 and really make sure. Not just, you know, hey,      5 man, you going to make it. You need to keep going      6 like really -- really sit there and have a      7 one-on-one with him, you know what I mean.</p> <p>8 It's almost like if someone had a      9 concussion, you want to ask them their name, how      10 many fingers am I holding up, check back in with      11 them. Make sure that their memory's working      12 properly. Make sure that -- that there's some      13 cognition there, you know.</p> <p>14 And so that's -- the buddy system is      15 to go above -- not even above and beyond, because      16 that's our standard, but to -- out in the world,      17 you know, you don't walk down the street asking      18 people if the heat's getting to them, you know.      19 Out on the tracks we do. That's the buddy system      20 in a nutshell.</p> <p>21 Q You referenced sweating. What's the significance      22 to you, based on that training, whether one is      23 sweating or not?</p> <p>24 A It's an indication that you're still hydrated,      25 that you're not losing all your fluids.</p>	<p>1 Q Yeah. It says in the past five years 30      2 engineering employees have suffered heat-related      3 incidents. Sixteen of these were serious enough      4 to be reportable, and 11 resulted in lost time.      5 Do you have any knowledge, other than      6 Guillermo Herrera, of anyone else suffering a      7 heat-related injury on Gang 8501 while you were      8 there?</p> <p>9 A I've had -- I've heard hearsay that -- that people      10 were dealing with the heat in different ways, but      11 I wasn't on the gang. Like you said, it was only      12 two days. So I don't really -- I don't know.      13 Like I said, all I've heard is hearsay. So I'm      14 not really sure what did or didn't happen, sir.</p> <p>15 Q Did you ever hear that Charles Turner had had a      16 problem, assistant foreman or foreman, I'm not      17 sure what his job was, Charles Turner had had a --      18 a problem with the heat a day or two before      19 Guillermo Herrera?</p> <p>20 A I heard guys talking about it, but it didn't come      21 from any official source, nor was of it like      22 briefed with me that it was something that      23 happened. I heard about it through the gang, but      24 that's about it.</p> <p>25 Q Okay. So that was -- If we look at Exhibit 4, the</p>
Page 39	Page 41
<p>1 Q Is it an indication at all as to whether or not a      2 person is suffering or could be suffering a      3 heat-related injury?</p> <p>4 A That's a medical question. I mean, that's not --</p> <p>5 Q Okay. If you could open up the exhibit book again      6 to Exhibit 13. You referenced it as QS7, the      7 training program. It's actually, I think, QS97.      8 Do you see that there?</p> <p>9 A Yeah, there's a 9 in there. My apologies.</p> <p>10 Q And this document says this information is      11 provided to assist supervisors in refocusing our      12 safety efforts. Do you see that?</p> <p>13 A Yes, sir.</p> <p>14 Q And the contents are the Leader's Guide. Now,      15 have you ever seen this document, this Leader's      16 Guide. Take a look at it, flip through it if you      17 need to.</p> <p>18 A I would say yes, but I would also say if it's      19 slightly altered at all I wouldn't know it being      20 there's so much criteria here.</p> <p>21 Q All right. Then you said something about -- Well,      22 strike that. Let's talk a little bit about that.      23 You see on the second page in the middle --</p> <p>24 A I'm sorry. I jumped all over. Hold on. I'm      25 sorry. Okay. Is it highlighted?</p>	<p>1 job briefing workweek, we identified Charles      2 Turner as a foreman of the Eight Man.      3 When -- If and when Mr. Turner went      4 down as a result of a heat injury, or left the job      5 because of a heat injury, do you know if that was      6 the subject of a safety standdown the day it      7 happened or the next day? Was it mentioned at the      8 job briefing the next day, do you know?</p> <p>9 A I was not there, no, and I didn't hear anything      10 about what you just asked me, the -- was it the      11 subject of a standdown or was it -- I was not      12 there. Like I said, I heard hearsay. I don't      13 even know when it happened, to be honest with you.      14 I just heard hearsay of it when I was -- when I      15 was there for that couple months.</p> <p>16 Q Now, I want to look at page 6.</p> <p>17 A Okay. Just a second.</p> <p>18 MR. GARLAND: It's still in that      19 exhibit.</p> <p>20 THE WITNESS: He said he wanted to      21 look at page 6.</p> <p>22 BY MR. COX:</p> <p>23 Q Page 6 of that exhibit. Sorry.</p> <p>24 A Okay. Yeah, sorry. Got tabs going here that are      25 pretty extensive. Okay.</p>

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1	<p>Q You see under work procedures, the second paragraph. Also, remember that in hot weather even normal tasks can cause an individual to become overheated. Be sure to know and be on the lookout for the signs and symptoms of heat stress from our annual training and, if possible, implement a buddy system during the hot weather. This means having two employees each responsible for watching the other for signs of heat stress, reminding each other to drink water, suggesting a task rotation or taking a break.</p> <p>Is that your understanding of the buddy system that the UP attempts to implement?</p>	<p>1 Q Okay. What about when he took the break in the truck -- Hang on a second.</p> <p>Let me go over with you a few things here. Sometime that morning, I believe it's about 10:30, Mr. Herrera sat in a truck for 30 to 45 minutes, and he described himself as feeling dizzy, weak, and having trouble breathing. And he was in the mechanic's truck for about a half an hour or so. Were you aware of that?</p>
12		<p>10 A Oh, yeah.</p>
13		<p>11 Q And what -- did -- did you ever doubt Mr. Herrera's stated need to sit in the truck to cool down?</p>
14	<p>A Yes.</p>	<p>12 A No.</p>
15	<p>Q I want to go to page 8 in that exhibit. Were you ever advised of what injury, what heat-related injury or illness Guillermo Herrera was diagnosed with at the hospital on July 26?</p>	<p>13 Q Did you make any observations of him as to why he would need to do that?</p>
19	<p>A Yeah. I just -- I -- Like I said, through the guys in the gang I asked how's he's doing, and they just said he had heat exhaustion. That's it.</p>	<p>14 A Can you please -- I don't like the way that's worded.</p>
22	<p>Q Okay. On page 8 in Exhibit 13, emergency response. You see that chapter title?</p>	<p>15 Q Did you have any reason to believe that he did not need to be in a truck to cool down?</p>
24	<p>A I do.</p>	<p>16 A Did I have any reason to believe he did not have a reason to be in the truck. No. It was at his own -- That's what he wanted to do.</p>
25	<p>Q It says as mentioned before, it is important that</p>	<p>17 Q What I have to do with it is nothing.</p> <p>18 A It's totally -- He wanted to be in the truck, he's</p>
	Page 43	Page 45
1	<p>everyone knows the signs and symptoms of heat stress and knows what to do should a coworker experience those signs or symptoms.</p>	<p>1 in the truck. I mean, that's -- you know yourself better than anybody.</p>
4	<p>A Um-hum.</p>	<p>2 Q Okay. And did you permit him to go into the truck?</p>
5	<p>Q If we recognize the early signs of heat strokes in ourselves or one of our coworkers, the remedy may be as simple as taking a break in the shade, if any, or an air-conditioned vehicle, and drinking water to allow our bodies to cool. If the heat stress appears to be more severe, don't hesitate in seeking immediate medical attention.</p>	<p>3 A Absolutely.</p>
12	<p>Did I read that right?</p>	<p>4 Q Did you tell Bobby Seely that Mr. Herrera wasn't feeling good and needed a break?</p>
13	<p>A You did, sir, yes.</p>	<p>5 A I did, but what I did was -- Okay. Bobby Seely came through, and I just wanted to say -- you know, I said he tells me he's fine, he's absolutely fine, he looks fine, but he did need a break. I just -- just so that this isn't just solely -- I wouldn't say on me because it isn't about blame. It's about really -- being compassionate and making sure he's okay.</p>
14	<p>Q And then it describes the symptoms and signs of heat exhaustion.</p>	<p>6 I said, you know, you being the safety captain, you having the extra PPE, I think it's wise you go have a briefing with him, and they did. And he did take PPE from him. Also, reinforcing, I mean, he's -- that's showing that, you know, he's not so dizzy that he can't function, that he can't make decisions. I mean, he had a briefing with him, you know.</p>
16	<p>On July 26, 2015, and we'll get into this in detail in a minute, what symptoms did you observe in Guillermo Herrera any time that day before calling Bobby Herrera in Guillermo Herrera? What symptoms or observations did you make of him?</p>	<p>7 I mean, I don't know -- like I said I'm not -- I'm not -- I'm -- I'm not the judge of</p>
21	<p>A You know, honestly, he was okay because he wouldn't have been on the tracks if he wasn't.</p>	
23	<p>Q What do you mean by that?</p>	
24	<p>A Well, what I mean is when I was observing him he appeared to be okay.</p>	

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1	that. I just listen to what -- what it is Herr --	1 exactly right. So that's like when we're talking
2	what Guillermo is telling me, you know, so -- I	2 about the questions here and you asked me, you
3	think I've answered the question.	3 know, and now I've just said it was 10:30, which I
4	Q All right. My question was did you tell Bobby	4 haven't even gone through my head what exact time
5	Seely that Mr. Herrera wasn't feeling good and	5 it was. I don't know that it was 10:30. It might
6	needed a break?	6 have been a little bit later in the day, but he
7	A No. What I told Bobby Seely was that he was	7 was in there for a couple hours, not 30 to 45
8	not -- he said he was lightheaded earlier and then	8 minutes. That's not -- No. And he came back on
9	he took a break, and then he came back on his own	9 his own will.
10	will and he's telling me he's okay. And he's been	10 Q All right. So how would you describe the
11	telling me he's okay ever since it happened. And	11 condition of a person, if your memory is accurate
12	that is what I told Bobby because I do not want	12 that he was in the truck for two hours, how would
13	anybody out there who's going to get hurt. It's	13 you describe the condition of a person that needed
14	just not worth it.	14 to be in an air-conditioned mechanic's truck for
15	Q In any of the training that you've ever received	15 two hours?
16	from the Union Pacific Railroad, have you ever	16 In other words, why would one have to
17	been told that the last person to ask how they're	17 be in an air-conditioned truck for two hours,
18	doing is a person that is in the throws of a heat	18 assuming your memory of two hours is correct?
19	illness?	19 A Because that is -- It's -- It's right here, I just
20	A Excuse me?	20 read it and -- Let's see. I mean, the -- the
21	Q Have you ever been told by anybody on the Union	21 deal, what it says is let -- let someone have
22	Pacific in any of this training that if a person	22 access to a truck and the air conditioner, you
23	is complaining of heat problems; dizziness, I need	23 know what I mean, and -- So why would he need to
24	to take a break, that you cannot rely on what they	24 be in there two hours? Maybe he felt fine. Maybe
25	tell you if they are in the throws of a heat	25 it took him that long to drink that much water and
	Page 47	Page 49
1	illness? You cannot -- They cannot -- Because	1 Gatorade where he felt he could come back.
2	they've become confused and lose mental function,	2 I personally got in the truck with him
3	they cannot be relied upon to describe to another	3 once me and the couple guys I was working with
4	person how they're doing. Have you ever received	4 worked up close to where he was at and, I mean, I
5	any training like that?	5 gave him my personal radio and he had access to a
6	A I know what you mean, but it's a little bit more	6 working radio to make sure that -- that, you know,
7	complex than that. The training I received said	7 he can say something if he had a problem, but I
8	they have to be exhibiting the signs.	8 got in the truck with him and we had a
9	He clearly was not exhibiting the	9 conversation, so yeah.
10	signs. He was taking all the precautionary	10 Q In that conversation -- By the way, was the
11	measures to stay hydrated. He was drinking lots	11 mechanic Brad present when you were having any
12	of water, lots of Gatorade. He was able to	12 conversation with Mr. Herrera?
13	have -- hold a conversation just fine, joking with	13 A He was not.
14	the guys.	14 Q Do you know Brad is the mechanic in whose truck
15	It wasn't -- There was no indication	15 Guillermo Herrera was sitting about 10:30 or 11 in
16	that he didn't have awareness that he was	16 the morning?
17	suffering from some kind of heat dementia or	17 A I do.
18	something or -- I don't know what -- where you're	18 Q Did you say to Mr. Herrera while he was sitting in
19	going with that, but that's -- that's what --	19 the mechanic's truck if you plan on being in the
20	that's how I'm going to leave that answer,	20 truck all day, you won't get paid?
21	Mr. Cox.	21 A Absolutely not. Absolutely not. No. I did not.
22	Q And that's your perception at the time about 10:30	22 And where I want to go with that, as far as how I
23	or so when he was in the mechanic's truck; is that	23 look at that, that has definitely been a
24	right, that point?	24 miscommunication.
25	A Okay. The timeline, I don't know if that's	25 I was saying why -- you know, all I

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<p>1 said was is it's not -- if you are feeling sick at      2 all, it's better that you recover from it, you      3 know, if you have to go back for a day to the      4 hotel room, instead of missing a whole week's      5 worth of work, but at no point did I say -- hence,      6 he was there the whole day getting paid for any      7 breaks that he needed that we did take officially.</p> <p>8 So to answer your question, no, but I      9 can see why -- how that got turned around, but no,      10 it's -- I never -- I never said anything -- I'm      11 not the railroad. I'm an employee of the      12 railroad.</p> <p>13 Q But you were his assistant foreman.</p> <p>14 A Yes, but that's -- again, that's above my pay      15 grade. I don't make those calls. I make the      16 calls to mitigate the risk of unsafe behavior,      17 provide on-track protection, and just make sure      18 that I'm the voice for my guys.</p> <p>19 Q Did Mr. Herrera return to work after he had been      20 in the mechanic's truck?</p> <p>21 A Yes, sir.</p> <p>22 Q And what work did he return to?</p> <p>23 A Trading off with the bus driver just placing      24 biscuits. Biscuits are plastic insulators that go      25 between what they call the tower of the tie, the</p>	<p>1 machine.      2 And at one point I do remember, and I      3 don't have a timeline, that he was standing in the      4 shade on the tracks, too, off the track, but when      5 he came back, I did not hear him complain about      6 dizziness because I was -- I was hyperaware and I      7 did not want to see him the way he is now.</p> <p>8 Q Who called Surfacing foreman Gang Robert or Bobby      9 Herrera? I'm probably going to refer to him as      10 Bobby Herrera. Who called Bobby Herrera that day?</p> <p>11 A I did.</p> <p>12 Q Why?</p> <p>13 A To get Guillermo transportation because around      14 3:30 in the afternoon he said that he wanted to      15 leave, he didn't feel good.</p> <p>16 Q And how do you get the time 3:30?</p> <p>17 A That's my timeline in my head. It was around that      18 time.</p> <p>19 Q All right. It's an estimate. We can agree on      20 that?</p> <p>21 A Pretty accurate one, yes.</p> <p>22 Q All right. I mean, how do you document that, or      23 how are you -- how are you able to say that's      24 pretty accurate? I'm not trying to --</p> <p>25 A Just my memory, yeah.</p>
Page 51	Page 53
<p>1 concrete tie, and the rail. And they help hug the      2 rail. You know, sometimes we put a little water      3 on them.</p> <p>4 Q Okay. We're going to understand all of that. I'm      5 just asking you what was he doing.</p> <p>6 A Well, earlier you were asking me if I had any      7 experience on concrete, so I felt like I'd kind of      8 elaborate on it in the process, but he was -- he      9 was -- he was putting those insulators in and      10 putting those clips in place so that the machine      11 could actually do the work.</p> <p>12 So he wasn't swinging a hammer. He      13 was just basically setting out material for the      14 machine to do the actual labor.</p> <p>15 Q Do you remember after he had returned to work      16 Mr. Guillermo telling you that he was feeling real      17 dizzy?</p> <p>18 A No. I do not remember that. There was one time      19 in the morning, and that was what led to his      20 break. Well, first he went to his machine, to get      21 it right, he went to his machine. And then he      22 sent word to me via the radio that he was going to      23 go to the mechanic's truck. So he was already on      24 break a little bit before the couple hours in the      25 truck in a shade machine. There's shade on that</p>	<p>1 Q Mr. Herrera thinks it's about 1 or 1:30.</p> <p>2 A No.</p> <p>3 Q Do you have any way to dispute that?</p> <p>4 A No, there's no way it was 1:30. I could actually,      5 if you give some time to do some research, it      6 wasn't 1 or 1:30 that he left. No way.</p> <p>7 There was a -- a fuel truck that came      8 through around 2 something. It's my job to      9 document what goes on during the day. That's how      10 I remember. And the -- the fuel truck came      11 through between 2 and 3, and he sat in that truck,      12 too, for about 15, 20 minutes, maybe longer. 1 or      13 1:30, that's just not going to add up at all.</p> <p>14 Q What would you look at to document that?</p> <p>15 A Witness sworn testimonies, lots of them. There      16 was -- You know, you got -- you got more      17 depositions I'm sure. I don't know. If you don't      18 already know, the people who were there.</p> <p>19 Q What would you look at? You said you were      20 responsible for keeping time of events, things      21 like that. Did you keep a log or a diary, or did      22 you make any notes about what happened that day?</p> <p>23 A That day I'm sure -- I'm sure I did. And, I mean,      24 like I said, I'd have to go back through my      25 records, I doubt I have it, but I do remember</p>

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<p>1        everything. I did go over this a little bit in my      2        mind. Yeah, you know, once he didn't return I was      3        thinking well, what -- I don't understand, you      4        know.</p> <p>5        So I just -- I've played back that day      6        in my head hundreds of times, you know, thinking      7        what could I have done differently. And I can't      8        see what I could have done differently for      9        Mr. Herrera.</p> <p>10      Q      When I was asking you about what you had done to      11     prepare for your deposition, have you reviewed any      12     documents?</p> <p>13      A      No, I have not.</p> <p>14      Q      No statements, no logs, no time rolls, nothing.</p> <p>15      A      No. No. Through and through I have not, sir. I      16     have not. Like I said, when you said how do you      17     know, from my memory. I remember.</p> <p>18      Q      Did the UP furnish you anything to review to      19     assist you in making accurate your testimony here      20     today? Did they provide you any documents?</p> <p>21      A      No. No. They made it -- They made it clear      22     what -- what the guidelines are.</p> <p>23      Q      So I'm back to the question of why you called      24     Robert Herrera, Bobby Herrera. Why did you call      25     him?</p>	<p>1        standing, and his shoulders were slumped forward      2        just a little bit, slightly. I still have a still      3        frame.</p> <p>4      Q      And did you form any impressions of his condition      5        at that time?</p> <p>6      A      Just that he did look exhausted at that time.      7        When I finally -- When it -- When -- When I seen      8        him he looked exhausted, you know. That's -- So,      9        you know, so we handled it accordingly.</p> <p>10        That's when he -- That's when -- I      11     wouldn't even -- If I viewed him like that before      12     he said he wanted to leave, I would have -- I      13     would have had him out. Like I said, I have a      14     still frame in my mind, in my memory of him      15     exactly where he was at. He was on the -- He was      16     on the side of the track, you know. He wasn't on      17     the field side. The field side is what we      18     reference the right-of-way where vehicles drive up      19     and down. He was actually over on the other side      20     and he was leaning up against that camp car, as we      21     call it, which is also another word for clipper,      22     and -- clipper car, you know, and we also have      23     a -- a bin that we haul our tools behind that, but      24     he was in the front.</p> <p>25        He was in the front of that machine,</p>
Page 55	Page 57
<p>1      A      Because Guillermo wished to leave.</p> <p>2      Q      And how did you call Mr. Herrera?</p> <p>3      A      On the radio.</p> <p>4      Q      And what about -- what did Guillermo Herrera say      5        to you?</p> <p>6      A      He just said, you know, I'm not feeling good, my      7        body feels weird. That's what he told me.</p> <p>8      Q      What else?</p> <p>9      A      That's it. I don't feel good, my body feels      10     weird, I don't know what's going on. Okay.      11     That's -- That's the -- the key there to what we      12     were talking about earlier. That's not what I      13     needed to hear. If I even thought that he was      14     trying to -- you know, I need to stay out here      15     because I'm worried about something else, like he      16     said pay or something, and I'm like no, you need      17     to go to home and I'll call somebody, but that      18     right there was -- he's like I'm feeling weird.      19     And I was like okay, we'll -- I'll -- we'll -- as      20     fast as I can I'll get somebody here to get you.</p> <p>21      Q      All right. And did you make any observations of      22     Guillermo Herrera at that time?</p> <p>23      A      At that time? He was still sweating and he was      24     just leaned up against the machine. And when I      25     say leaned up, he was half sitting on it, half</p>	<p>1        closest to the front of the machine, and he was      2        just -- he was just like half sitting, half      3        standing with his shoulders slumped forward, and      4        he looked like he was thinking, you know, like he      5        was evaluating his own condition. And of course      6        he was nervous. He said I feel weird. And I said      7        well, I'll get you out of here, you know. All      8        right.</p> <p>9      Q      Now, what was your thought when you say I'll get      10     you out of here? What was your thought? What      11     does that mean, get you out of here?</p> <p>12      A      To call somebody. You know, to call Robert, who      13     is -- who's the nearest available vehicle to get      14     him to where he needs to go, you know.</p> <p>15      Q      And where did he need to go? Did you form any      16     opinion in that regard?</p> <p>17      A      I -- Like I -- I didn't really form an opinion      18     except to say that I knew he wanted to leave. You      19     know, it's -- it really wasn't up to me where he      20     goes because, again, you know, I -- from what I      21     saw there, I just was concerned about getting him      22     a ride. Where he went, you know, I didn't even      23     really -- This happened so quickly, Mr. Cox, that      24     we didn't have like an in-depth conversation,      25     Mr. Herrera and I.</p>

<p style="text-align: center;">Page 58</p> <p>1        He was sick. He was gone. I didn't      2        get the chance to get an evaluation, like check in      3        with him and be like, hey, you know, what do you      4        want to do. Do you need -- You know, again,      5        looking for the signs of heat stress, you know. I      6        didn't -- I didn't have much time at that point to      7        evaluate him, you know, is he still sweating, you      8        know. Is he -- Is he -- Can he tell me what, I      9        don't know, his favorite lunch was back in fifth      10      grade. Just -- Just make sure he's not -- his      11      cheese isn't off his cracker and that he's not      12      showing any physical signs of, you know, heat --      13      exhaustion, which is what -- what it would have      14      looked like at that point if I had more time with      15      him maybe. I don't know. I didn't have very much      16      time with him, but heat stroke, going a step      17      further, so -- which -- it's almost one in the      18      same. You might as well go with the more      19      restrictive, but -- So anyways, I had him out of      20      there within a couple minutes from him telling me      21      he wanted to go and making that contact with      22      Mr. Herrera, Bobby Herrera, because we have two      23      Herreras here. Bobby Herrera from the Servicing      24      Gang came within a couple minutes of my      25      transmission over the radio.</p>	<p style="text-align: center;">Page 60</p> <p>1        any, or an air-conditioned vehicle, and drinking      2        water to allow our bodies to cool. If the heat      3        stress appears to be more severe, don't hesitate      4        in seeking immediate medical attention.      5        Did I read that right?      6      A     You did, sir, yes.      7      Q     And at the time that you find Guillermo Herrera      8        sitting on the machine, slumped over, and he had      9        already been in the truck, or a truck, once or      10      twice before, did it appear to you that the heat      11      stress had not cleared as a result of being in an      12      air-conditioned vehicle and drinking water?      13      MR. SCHMITT: Object to the form.      14      BY MR. COX:      15      Q     Did he appear --      16      A     What does that even mean?      17      Q     Did he appear to be continuing to be suffering the      18      effects of the heat?      19      A     Well, Mr. Cox, this isn't -- this isn't me trying      20      to go around your words, and I understood the      21      question completely. And we're all hot out there.      22      We're all taking breaks. We all would have fit      23      the criteria for heat exhaustion not only in the      24      railroad, but out there on construction crews and      25      everywhere where this QS97 is implemented, or the</p>
<p style="text-align: center;">Page 59</p> <p>1      Q     And did --      2      A     He has a lot of experience.      3      Q     Did you and Mr. Newman have to assist      4        Mr. Guillermo Herrera to Bobby Herrera's van?      5      A     No.      6      Q     Did -- Is it your statement that he walked on his      7        own?      8      A     Yes. He had people standing next to him, but they      9        were not assisting him. They were there just in      10      the event he did not -- he was not able to perform      11      the task on his own.      12      Their hands, if they were touching      13      him, were on the exterior of his shoulders, not      14      underneath his shoulders. Almost like support.      15      The buddy system, you know. We're here, it's all      16      right.      17      Q     All right. Let's go back to Exhibit 13.      18      A     Okay. I'm in there. I'm on page 8.      19      Q     Correct. It says if the heat stress appears to      20      be -- Let me read the preceding paragraph. And      21      this is, again, the UP training program.      22      A     Okay.      23      Q     If we recognize the early signs of heat stress in      24      ourselves or one of our coworkers, the remedy may      25      be as simple as taking a break in the shade, if</p>	<p style="text-align: center;">Page 61</p> <p>1        construction gangs, you know, the construction      2        OSHA standards, stuff like that, we're all taking      3        lots of breaks and would exhibit looking exhausted      4        because it's hot. It's real hot out there, but      5        you have to know your own limitations.      6        So when you ask me a loaded question      7        like that, I don't really know how to respond      8        because then everybody -- there would be nobody on      9        the tracks. There would be nobody in jobs      10      anywhere, you know.      11      So when you say should he have got      12      medical attention because he exhibited what he      13      exhibited towards me, I would say no. This is      14      about the third time I've said that I've checked      15      in with him, and I told you the conversation and      16      what it was he was doing and what it was I was      17      doing in my observations to make sure of it that      18      we didn't have an emergency situation.      19      As far as what happened after      20      Guillermo left me, I can't -- that's not -- I      21      don't -- you know, I can tell you what I      22      witnessed.      23      Q     Okay. What did Guillermo Herrera say to you when      24      he was sitting on that machine slumped over like      25      you described? What did he say to you?</p>

	Page 62		Page 64
1	A Yeah. He said I feel weird, I want to leave.	1	dizziness, weakness, flushing of the skin.
2	Q Now, Guillermo Herrera has been in an air-conditioned truck for either 30 to 45 minutes or, according to your testimony, two hours. Then he was back in an air-conditioned truck --	2	Actions to take if this occurs: Get the person in shade, start cooling, give fluids, seek medical attention if symptoms do not improve in 15 to 20 minutes.
3		3	
4		4	
5		5	
6	A Twenty minutes.	6	Did Mr. Herrera's symptoms, to your observation, get better or worse during the earlier part of the day?
7	Q -- and then about this time he's sitting on a machine, slumped over, saying he feels weird, and you said he looked exhausted?	7	
8		8	
9		9	A Did his symptoms get better or worse during the early part of the day?
10	A I got in the truck with him for a while.	10	Q From earlier in the day.
11	Q No, no. No, no.	11	A From earlier? Oh, from earlier in the day. That matters. That matters. They --
12	A I got in that -- I got in the mechanic's truck, too, at one point to get some air conditioner. So did another guy on my gang. They were trading out.	12	MR. SCHMITT: Let me just object to the form regarding symptoms earlier in the day. Go ahead. I mean, who's testifying? But go ahead.
13		13	
14		14	MR. COX: That's an interesting objection. Go ahead.
15		15	MR. SCHMITT: Well, but, Jim, I mean, he's already testified to what he observed earlier in the day.
16	Q Okay. My --	16	MR. COX: David, stop.
17	A This isn't limited to.	17	Q Go ahead.
18	Q Please listen to my question.	18	A Well, I mean, it's still -- there's -- there is --
19	A Yes, sir.		
20	Q I know you're --		
21	A Yes, sir. I just take the personal statements serious.		
22			
23	Q When he was sitting on the machine just before you called Bobby Herrera to come get him --		
24			
25	A This is not a game.		
	Page 63		Page 65
1	Q -- he was slumped over, he said he was feeling weird, and he had been in a truck earlier that day for either a half an hour or two hours, and then back in an air-conditioned truck, both air-conditioned trucks, on two occasions.	1	and this is how I honestly see it in my mind.
2		2	
3		3	There's where we started out, you
4		4	know, he said he was lightheaded. I was
5		5	lightheaded that day. Even talking, you know,
6		6	like I -- I -- I was. And so here's where we
7		7	started out. I was lightheaded. I recovered that
8		8	fine, not to -- not to -- I know my own
9		9	limitations. That has nothing to do with
10		10	Mr. Guillermo Herrera because you're the judge of
11		11	your own body, but he said he's lightheaded. He
12		12	went to a truck.
13		13	Now, I understand what you're driving
14		14	at here, that he was in a truck more than 15
15		15	minutes, you know, and you think that would be --
16		16	No. He said he was lightheaded. His -- His
17		17	condition only improved or stayed the same, from
18		18	what he was telling me, until it was too late.
19		19	There is no this was a downward slope
20		20	throughout the day and we didn't -- we didn't
21		21	properly take care of Mr. Guillermo Herrera. No.
22		22	It was -- I was 100 percent, in my mind, focused
23		23	on my abilities to lead a group, as you keep
24		24	referencing this manual, to observe that.
25		25	And -- And it -- it hurts to see that
			that -- that it could even be worded that way

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<p>1 because he was fine, and then he wasn't, but  2 through the course of the whole middle of the day,  3 all those events and stuff, every safety  4 precaution, every measure, every observation was  5 taken to ensure that we were giving him a safe  6 work environment to be in.</p> <p>7 I don't know, you know -- and -- and  8 like Mr. Schmitt has said here already, you know,  9 I've said all these things. I just keep repeating  10 myself now.</p> <p>11 Q My question is was he worse off when he was  12 sitting on the machine and you called Bobby  13 Herrera than he had been earlier in the day?</p> <p>14 A Well, yeah. In a matter of a couple minutes.</p> <p>15 Q Look at page 9, if you would.</p> <p>16 A Hold on. I almost -- These tabs, you know, I want  17 to go to your tabs instead of the pages. Okay,  18 I'm on 9. How much you got? How many tabs are  19 these? 40 tabs? Wow. It's pretty extensive.</p> <p>20 Q Let's see what I wanted to ask you about here.</p> <p>21 A I don't have anything.</p> <p>22 Q Under environmental procedures, Paragraph 2, it  23 says take at least a five-minute break every hour.  24 In California breaks must include access to shade  25 or air-conditioned vehicles.</p>	<p>1 you were asking some of the questions you were  2 asking. I didn't understand. Just, basically,  3 the -- the stuff that I didn't understand that I  4 needed clarification on. Some of the questions I  5 didn't know.</p> <p>6 More about like how this is going.  7 Like am I talking too much, am I -- As far as  8 talking too much, when I say that I mean am I  9 talking too loud, can you hear me, like what he  10 just said with the yes, how I'm answering.</p> <p>11 I've never been in a deposition, so  12 the setting is all new to me. So I was just  13 asking them, you know, standard questions of that,  14 but not anything to what we were really talking  15 about.</p> <p>16 BY MR. COX:</p> <p>17 Q Okay. All right. Let's move to July 25th, 2015.  18 I understand that was your first day as assistant  19 foreman on the gang?</p> <p>20 A Please say the date again.</p> <p>21 Q July 25th.</p> <p>22 A 20 what?</p> <p>23 Q Fifth. The day before Mr. Herrera's heat injury.</p> <p>24 A July 25th, 20 --</p> <p>25 Q '15.</p>
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<p>1 The second bullet says use the buddy  2 system to watch out for each other.</p> <p>3 A Um-hum.</p> <p>4 Q Who was Guillermo's buddy that day, if you know?</p> <p>5 A Oh, I was his personal buddy.</p> <p>6 MR. GARLAND: Jim, while there's no  7 question pending, can we take a quick break? I  8 have to use the restroom.</p> <p>9 MR. COX: Sure.</p> <p>10 MR. GARLAND: Thank you.</p> <p>11 VIDEOGRAPHER: Time is 9:29 a.m.</p> <p>12 We're off the record.</p> <p>13 (Recess taken.)</p> <p>14 VIDEOGRAPHER: This is the beginning  15 of DVD number two. The time is 9:44 a.m. We are  16 back on the record.</p> <p>17 BY MR. COX:</p> <p>18 Q Mr. Nicholson, we just took a break for about 15  19 minutes or so. Did you speak with either lawyer  20 during the break?</p> <p>21 A Yes.</p> <p>22 Q About what?</p> <p>23 MR. GARLAND: Objection.</p> <p>24 THE WITNESS: Just -- Just like how  25 much longer we think it's going to take, and why</p>	<p>1 A -- 15, yes. I think you said '16. On 2015 --  2 July 25th, 2015, yeah, that was my first day on  3 the gang, sir.</p> <p>4 Q Tell me -- Did you join the gang that morning?  5 Did you come sometime during the day? Were you  6 there for the morning job briefing?</p> <p>7 A Yeah. I had two -- two full days.</p> <p>8 Q So you were there for the job briefing on the  9 morning of July 25th.</p> <p>10 A Yes, that's correct.</p> <p>11 Q And what -- what work did the Cleanup Gang or  12 Quality Control Gang do under your authority on  13 July 25th?</p> <p>14 A We -- What -- We did quality control.</p> <p>15 Q And tell us what that -- your understanding of  16 what that was. My question is how did you learn  17 what you were supposed to do on -- as assistant  18 foreman of the Quality Control Gang?</p> <p>19 A Well, from -- I mean, from the guys there. Those  20 guys had been doing it for several months, if not  21 years, prior to me coming there.</p> <p>22 The -- The assistant foremen, you  23 know, they don't -- they're there for the on-track  24 safety, and also for safety concerns, and also  25 making sure nobody is doing any unsafe behavior.</p>

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<p>1 Those guys gave me a very clear idea of what was  2 supposed to take place and how it was supposed to  3 take place. And if I saw anything that was  4 subject to unsafe behavior, then I would have said  5 something, but as far as like what we do, we make  6 the tracks safe so that trains can run on it after  7 the fact.</p> <p>I mean, in anything you doing in  9 railroading, I mean, that's our goal as being in  10 the Engineering Maintenance Department.</p> <p>11 Q Okay. Did --</p> <p>12 A You can tell when a track's unsafe.</p> <p>13 Q Can we -- Is it fair for me to say that you were  14 learning on the job, you had on-the-job training  15 that day?</p> <p>16 A Yes, sir.</p> <p>17 Q No supervisor had told you how to do the job or  18 how the job was to be performed or anything like  19 that. You learned on the 25th and on the 26th?</p> <p>20 A Yeah. Well, we have -- like you said, those  21 assistant foremen, we all meet up in a group in  22 the morning and we get our machine operators,  23 employees checked in with us. That's just not  24 something that happens infrequently or  25 sporadically. Every single morning that is part</p>	<p>1 the track out there after we're gone.</p> <p>2 Q All right. We all have to catch a plane. So if I  3 interrupt you or feel like you're getting too  4 broad in your answers --</p> <p>5 A Yes.</p> <p>6 Q -- I might interrupt you.</p> <p>7 A Okay.</p> <p>8 Q We need to stay kind of focused here. You  9 referenced your concrete tie experience. I  10 thought I understood earlier that July 25th, 2015  11 was the first day worked on concrete ties.</p> <p>12 A For rail. Big difference.</p> <p>13 Q Okay. Had you worked on a Concrete Tie Gang  14 before?</p> <p>15 A Yeah.</p> <p>16 Q When did you do that?</p> <p>17 A Eight months prior. About eight or nine months  18 prior to going to a Curve Gang and then over to --  19 It's like eight or nine -- Maybe eight to -- Let's  20 see here. Let me tally it up real quick for you,  21 and if you want to interrupt me --</p> <p>22 Q Just an estimate.</p> <p>23 A Okay. It's okay -- An estimate's okay?</p> <p>24 Q Yeah.</p> <p>25 A Okay. An estimate would be eight -- eight months.</p>
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<p>1 of our -- I have a briefing in the morning for a  2 foreman's meeting. Then we have an actual  3 briefing with the whole group, and then we have  4 subgroup briefings which, if you want to make  5 reference to your own tab there on the job  6 briefing, that would be a subgroup on that job  7 briefing sheet.</p> <p>8 So there was a lot of information  9 passed to me. And me having the background I had  10 with concrete ties, I wouldn't say I was ignorant,  11 by any means, to what needed to take place. Like  12 I said, we could take a step back a little bit  13 from the actual duties being performed, and look  14 and see that the track needs to be safe when we  15 leave for trains to run on it. It depends on what  16 class of track it is, too, you know what I mean.  17 It's -- That's -- The standard goes, you  18 know, some tracks, you know, if they're not going  19 to have any heavy freight on it or commuter-type  20 things, then they don't have as many things that  21 need to be done, but I can see that, having the  22 background I have in concrete, you know, all the  23 clips need to be on, we need to have safe ties in  24 place, make sure that we're not going to put  25 anything that's going to jeopardize the safety of</p>	<p>1 Approximately eight months on a Concrete Tie Gang,  2 but not just in one area. I went from the front  3 to the back of that gang. It actually initially  4 started out as a TRT Gang, which replaces rail and  5 ties at walking speed, but that is contracted out  6 to Harsco, who runs the machines, so I was  7 observing them.</p> <p>8 So I had a little bit of background  9 with rail and concrete ties. I apologize for the  10 misconception. I mean, in our world there's a big  11 difference between rail and -- I mean, between  12 wood, concrete, but also rail and ties.</p> <p>13 Q Okay. So this is your first -- July 25th was the  14 first time you'd ever worked on a Steel Gang on  15 concrete ties.</p> <p>16 A July -- I'm sorry.</p> <p>17 Q July 25, 2015, the first day you had worked on a  18 Steel Gang on concrete ties.</p> <p>19 A Steel Gang on concrete ties. Steel Gang and --  20 Yes. Yes, that is correct.</p> <p>21 Q All right.</p> <p>22 A Yeah. And that's what I answered to earlier.</p> <p>23 Q Have you ever operated a P car?</p> <p>24 A Yeah.</p> <p>25 Q Are you qualified on a P car?</p>

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1 A No.	1	briefing takes at least 30 minutes, and 8:30. We
2 Q Have you ever worked it as an assigned job?	2	were definitely at it. There was no reason not to
3 A No. I've never done the production on it. I've	3	be out their working. There's nothing there in
4 just moved one. When you said have I operated a	4	between, but to give you an exact time, no, I do
5 P car, I've had to move one down the tracks just	5	not have that. Before 8:30.
6 to get it out of the way.	6	Q Was there -- What distance was there between the
7 Q Okay. But you've never clipped or de-clipped	7	Cleanup Gang and the balance of the gang on
8 using a P car.	8	July 26?
9 A No, no, but there's really not much to it.	9	A That's kind of tricky. They did a skip. They put
10 Q Okay. Now, do you remember what time you started	10	about a mile on us, a little less than a mile, and
11 on July 25th that morning?	11	then there's a skip. That first day they just ate
12 A 5:30 was the foreman's meeting, and 6 o'clock was	12	up that section of track. It wasn't very much. I
13 the start time and the briefing was to commence	13	don't remember exact footage, you know, maybe a
14 for the larger group.	14	half a mile or something, but then there was an
15 Q What time did you actually start working, if you	15	area that did not need any attention. And I don't
16 know? July 25th I'm talking about now.	16	know how many miles they went up the way, but then
17 A Oh, okay. It's the same. It holds the same for	17	they were gone. I know that they got a lot done
18 both days, as far as what I've given you so far,	18	after that, but -- yeah. So there's a skip there.
19 but what time we actually started working at? I	19	So they were at least a couple miles up the way.
20 would say probably between 7:30 and 9.	20	Q Was the Quality Control Gang falling behind?
21 Q All right. And do you know how -- do you remember	21	A Yeah.
22 how long you worked on July 25th?	22	Q Why?
23 A Go back on that. I'm sorry. I had to think about	23	A Why were we falling behind? Because there was a
24 that a lot. It's -- The -- That's a wrong answer	24	lot of work there. The track needs a lot of
25 because we start at -- 6 is our meeting, and we	25	attention. It wasn't an easy job.
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1 were really just right there. It might have taken	1	Q Did anyone -- any supervisors ever tell you to
2 us 20 minutes to get out to the job. So it had to	2	hurry up or catch up?
3 be like 6:30 to -- like maybe 7 -- 7 to 8:30.	3	A No. No, they knew I was new and -- yeah.
4 There's no way we started at 9. That would be way	4	Q All right. Let's talk about who was regularly
5 too late. And it doesn't -- it doesn't match up	5	assigned to your gang on July 26, 2015. What was
6 at all.	6	Guillermo Herrera's job, his assigned job?
7 Q How late did you work that day?	7	A Okay. Through actual verbal conversation with him
8 A 5-ish.	8	I found out that he was assigned to the speed
9 Q All right. Let's go to July 26th. Do you	9	swing.
10 remember when you actually began to work on	10	On the 25th, Jeremy, another guy on
11 July 26th?	11	the gang, operated it the whole day right in front
12 A That would be around the same -- the time in the	12	of him, and he had nothing to say about that or
13 morning. The timeline would be --	13	anything. When it came down to it, when Jeremy
14 Q Would you have any reason to dispute the	14	was gone the next day, on the day of his actual
15 timekeeper's records of when you all started to	15	injury, that's when he told me he was assigned to
16 work on July 26th?	16	it. I had no idea. He had already been sitting
17 A We started work at 6.	17	on that P car for the whole day of the 25th,
18 Q And when did you actually start working on the	18	and --
19 track?	19	Q Sitting on the --
20 A The timekeeper has that?	20	A -- this is all relative -- What?
21 Q Yes, but what is your estimate?	21	Q Sitting on the P car?
22 A No, he doesn't.	22	A Yeah, on the 25th. The P car. He was on the
23 Q What is your memory?	23	P car on the 25th.
24 A Out there on the tracks it was -- All I can say is	24	Q Who?
25 before 8:30. Between 6 and 6:30, because our	25	A Guillermo Herrera.

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1 Q Okay. Now, was Guillermo Herrera assigned to the	1 July 26.	
2 P car on July 25th and 26th?	2 A What?	
3 A Finding out later, no, he was not.	3 Q On July 26, who was on the gang?	
4 Q He was a speed swing operator, but Jeremy Marsing	4 A There's --	
5 was operating the speed swing.	5 Q On your gang.	
6 A The day prior, yeah, on the 25th.	6 A -- a lot of people on --	
7 Q Do you know if Jeremy Marsing is qualified to	7 Q On the Quality Control Gang under your authority	
8 operate a speed swing?	8 on July 26.	
9 A I do not know. I do not know. That I do not	9 A On July 26, the day of the incident, Dennis was on	
10 know. Never even -- It's never been any -- That	10 the camp car. I don't have a last name.	
11 has never been subject to any discussion.	11 Q We'll learn it's Dennis Dickison.	
12 All I know is that, you know, between	12 A Dickison, thank you. And then Logan.	
13 Guillermo and Jeremy, they were okay with both of	13 Q What was Logan Newman's job?	
14 them doing what they were doing on the 25th. Come	14 A He was a laborer.	
15 the 26th, Jeremy was gone. That -- That changed	15 Q He was normally the bus driver, wasn't he?	
16 things a little bit.	16 A Correct.	
17 It's at that time I found out that --	17 Q And then he -- because you were shorthanded, he	
18 that Guillermo -- I inquired about using the	18 was assigned to work as a laborer on the gang; is	
19 equipment to move some ties over that were under	19 that right?	
20 some welds because that's a no-no, and I was told	20 A Yeah. I do not believe he was assigned. He came	
21 from the foreman that he had seen Guillermo	21 there on his own. I thought he was like the	
22 operate the speed swing, and it wasn't done safely	22 clouds opened up. I was so happy he came down	
23 so he was not to operate it. I said okay.	23 there because -- I wasn't asking for double the	
24 Well, what's his face, Logan, Logan	24 work. I was just doing what we could get done,	
25 was there, and I said can Logan operate it. And	25 and --	
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1 he's been on that 8501 for a number of years, I	1 Q So Dennis Dickison is the camp car operator.	
2 believe. It's speculation. I'm pretty sure.	2 Dennis Dickison was on light duty; is that right?	
3 He's got a lot of time there. He said yeah, it's	3 Do you recall that?	
4 okay if Logan operates it. And that's because	4 A That is correct, yeah.	
5 Logan's esteemed. He's not somebody that's new	5 Q All right. And Logan Newman, the bus driver, came	
6 within the last couple years or anything. Logan's	6 to help out. Who else was on the gang that day?	
7 been around, and he knows -- he knows how, you	7 A The -- On the 26th -- Between the 25th and the	
8 know, how Logan works. And so I -- I put Logan on	8 26th, intermittently the Servicing Gang came to	
9 the machine, and Guillermo was upset about that.	9 help. And on the 26th they did come to help	
10 Q Put Logan on which machine?	10 because -- yeah, they did come to help. They were	
11 A On the speed swing, because I was given the	11 helping move ties for the time that we had that	
12 go-ahead, yeah. It was parked off to the side,	12 speed swing.	
13 and I said we need to be utilizing that to move	13 We did like one. I don't even think	
14 these ties.	14 we did one. We got the first one and everybody's	
15 Q Okay. And do you know if Logan Newman is a	15 like ah, it's so hot I do not want to do that. So	
16 qualified speed swing operator?	16 we got the speed swing like, you know, because I	
17 A I do not. I was just told he had the go-ahead,	17 was listening, like you said, me being new in OJT,	
18 so, I mean, on the assumption that he was, I mean,	18 I was listening to what they had to say. They	
19 you know, it's like questioning my, you know, my	19 said we can use the speed swing, you know, we did	
20 superior's ability to, you know, to -- that's --	20 yesterday when Jeremy there was. So I made sure	
21 that wouldn't be something that I'm like well, is	21 to flag down a foreman and got the okay.	
22 he qualified. I said could he run it, he told me,	22 And fortunately, not for Guillermo,	
23 and I said okay, that's good. All right. We'll	23 who had been already operating the P car, so I	
24 get Logan in there.	24 thought they were at peace with that whole	
25 Q All right. So just tell me who was on the gang on	25 situation, don't know the details, but had Logan,	

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<p>1 who I got the okay because I felt -- we      2 wouldn't -- you know, I don't know that we would      3 have been able to use it hadn't Logan been there.      4 And I don't know what Logan's qualifications are,      5 but it worked out pretty good, but --</p> <p>6 Q Okay. We know there's Dennis Dickison. We know      7 there's Logan Newman. We know there's Guillermo      8 Herrera, and we know there's you.</p> <p>9 A Yeah. There's three servicing guys, too.</p> <p>10 Q Really? What are their names?</p> <p>11 A One of them's name is Scott. I don't know his      12 last name. They call him Scotty. And another      13 one -- you know, there's two other guys there and      14 they're on the tamper. They're Bobby Herrera's      15 guys.</p> <p>16 Q What were they doing?</p> <p>17 A They would come up and help. Like I said,      18 intermittently they would come up and help out.</p> <p>19 Q Why?</p> <p>20 A Because they had already caught up behind us.      21 Their job is to surface everything behind us. And      22 because we were moving so slow they were at the      23 standstill. So they got out and gave us a hand.</p> <p>24 They did have a lot of problems with      25 that tamper. So even times when they could help</p>	<p>1 July 25th and 26th?</p> <p>2 A Half the time. 50/50. It got to the point where      3 Logan, who, like I said, he's esteemed, has a lot      4 of time on, said he's not -- he's leaving      5 everything for me. And I would come up there      6 and -- I came up there and talked with Guillermo      7 and -- and just said, you know, we're getting a      8 lot back here, and these guys from their      9 experience are telling me that, you know, there's      10 a lot of clips missing, I think it would be more      11 beneficial that we just swap out taking care of it      12 back that, being that machine he was on it doesn't      13 de-clip anyway. All it does is clip. So he's      14 going to leave stuff no matter what.</p> <p>15 Q Who?</p> <p>16 A The operator of the P car, which would have been      17 Guillermo at that time. Like I said, half the      18 time we were using it, and half the time we      19 weren't, but the only person who was ever on it      20 was -- was him, unless it was being moved. I      21 moved it, but I didn't operate it. I was in the      22 same boat.</p> <p>23 Q Why wouldn't you use the P car full time?</p> <p>24 A Well, like I said, it was busted, and he was      25 missing too many things, and he was missing far</p>
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<p>1 out they didn't because they were back there --      2 Well, they couldn't because they were working with      3 their machines that were constantly going down on      4 them. And that actually held pretty true for the      5 rest of my duration on the gang. Those machines      6 were going down quite a bit.</p> <p>7 Q Okay. Let's -- What is your recollection of      8 whether or not the P car was being used to clip or      9 de-clip the clips on the surface -- on the Quality      10 Control Gang on July 25th and 26th?</p> <p>11 A What is my recollection of the clipper car -- its      12 ability to clip and de-clip? One of them could      13 only -- Between the camp car and the clipper car      14 was -- they're essentially the same thing except      15 that the camp car has the ability to manipulate      16 the rail over so we can get those insulators in in      17 order to put the clip on.</p> <p>18 The -- The -- The P car could only      19 clip. So anything that would fall behind that car      20 was for the camp car to get, but -- yeah. So      21 that's -- that's -- that's what it is.</p> <p>22 Q Let me ask the question again.</p> <p>23 A Yeah, go ahead.</p> <p>24 Q Were you permitting the use of the P car to clip      25 and de-clip the clips on the concrete ties on</p>	<p>1 too much.</p> <p>2 Q The P car was busted?</p> <p>3 A Well, the -- it wasn't -- it didn't have -- it      4 wasn't busted. It just didn't have the ability to      5 de-clip, and the car behind it did. It was really      6 just a -- a -- nice to have there to have one more      7 functionality.</p> <p>8 I mean, it was deemed as safe to      9 operate by a mechanic, but its capabilities      10 weren't able to catch all the flaws ahead, you      11 see. So I was already walking behind the camp car      12 checking our QC making sure that -- especially      13 since we're going as slow as we are, that we're      14 dishing out, you know, good quality.</p> <p>15 So I brought everybody to the back,      16 and I was going back behind the gang, not very      17 far, maybe a hundred foot tops, and just making      18 sure that we're leaving good quality behind.</p> <p>19 So the machine -- I guess busted is a      20 bad word. It wasn't operating at its full      21 capacity, but at the same time it still made our      22 jobs easier and it still had a purpose.</p> <p>23 As far as the camp car goes, that      24 could actually take care of all the work on its      25 own. And Guillermo -- like I said, Logan had told</p>

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<p>1 me that Guillermo is not helping our cause to do 2 QC up there on that car.</p> <p>3 Q Who told you that?</p> <p>4 A Logan Newman.</p> <p>5 Q Okay.</p> <p>6 A And I was observing it, too. He didn't just say I 7 know about Steel Gangs and this is what's going 8 on. No. I used critical thinking, I looked at 9 it, and I noticed he's missing things that he even 10 spray painted himself.</p> <p>11 The whole object is to go ahead, walk 12 ahead, set out the clips you need, even get them 13 lined up so that you can clip. Remember, you 14 can't de-clip. So you just have to leave that 15 behind. You can mark it for the guys back there. 16 You could mark the tie that's going to need 17 de-clipped and clipped again. You're supposed to 18 do that because that's what they were doing, 19 that's their system they had in place, but what 20 Logan was telling me was he wasn't marking those 21 ties that needed de-clipped, and we were missing 22 things.</p> <p>23 Q Who wasn't? Guillermo wasn't?</p> <p>24 A Yeah, Guillermo wasn't. He had a can of spray 25 paint up there, and he would go out in front of</p>	<p>1 Q So on July 26th was the P car being used to clip 2 or de-clip the clips?</p> <p>3 A Let me think. No, because we didn't -- we 4 didn't -- with Guillermo saying that he needed a 5 break and then he needed to go to the mechanic's 6 car, there was nobody to run it. I have to be out 7 there to take care of the on-track safety and be 8 there with the guys and also watch the cleanup. 9 So there was nobody to operate it on 10 the 26th starting, you know, around 9 or 10 when 11 he said he was lightheaded.</p> <p>12 Q So had the P car been used at any time to clip or 13 de-clip the clips on July 26th?</p> <p>14 A Maybe for -- you know, before he -- before he felt 15 lightheaded he might have done a little bit 16 that -- that one instance because him and Logan 17 were trading out sitting on it.</p> <p>18 Q Well, sitting on it is different than operating 19 it.</p> <p>20 A Well, they still were operating it, too. And then 21 once Guillermo was down and out, I mean, that's 22 really in the morning it was done, so it was 23 operated.</p> <p>24 Q All right. So --</p> <p>25 A You know, you're going to mark stuff, we're going</p>
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<p>1 that P car and mark what needed to be done, but he 2 was not -- he was not marking it, and -- and there 3 was no reason why. I went up there and had a 4 couple job briefings with him, and I couldn't 5 understand why, you know. And --</p> <p>6 Q Is this on July 26th or 25th?</p> <p>7 A The 25th. The 25th. Yeah. The 25th was our -- 8 was our kind of -- I don't know if he was happy 9 that I bumped in or what, but he kind of -- I kind 10 of felt a little bit -- some negative vibes coming 11 off of him. I mean, he didn't -- he didn't really 12 seem like he wanted to work with me.</p> <p>13 You know, I don't know -- it's kind of 14 like the whole theme that you started to go 15 across, you know, like -- like well, you don't 16 even know what you're doing, and I'm like I'm 17 learning and actually -- we're not going to do 18 anything unsafe and we're not going to do double 19 the work, he was -- because the next day in the 20 morning, the day of the incident, he apologized to 21 me for his behavior on the 25th. That happened. 22 We had a conversation. He's like I'm sorry about 23 yesterday. And I said hey, I'm new. I get it, 24 you know. Things like this happen. Let's just 25 have a clean slate. Let's move forward.</p>	<p>1 to help each other out.</p> <p>2 Q I'm just asking about was the P car used to clip 3 or de-clip --</p> <p>4 A Yes, it was.</p> <p>5 Q -- on July 26th?</p> <p>6 A Yes, sir, it was used.</p> <p>7 Q Now, that's different than what you just told me 8 early. Was it used, or not?</p> <p>9 A Yes.</p> <p>10 Q By whom?</p> <p>11 A Logan and Guillermo. I didn't tell Guillermo he 12 couldn't operate it if he's on it. I seen him 13 operating it.</p> <p>14 Q Do you have a memory of a conversation with the 15 members of the Cleanup Gang discussing with you 16 that the P car should be used rather than doing 17 the work manually?</p> <p>18 A I don't remember that.</p> <p>19 Q If they were to claim that --</p> <p>20 A There was lots of suggestions coming from every -- 21 every direction, I mean, you know.</p> <p>22 Q Well, was one of those conversations or 23 suggestions that the P car be used rather than 24 attempting to clip and de-clip the clips by hand?</p> <p>25 A If that conversation was had it wasn't had with</p>

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<p>1 me.</p> <p>2 Q Who would it have been had with?</p> <p>3 A I don't know. You're asking me a question that</p> <p>4 I -- No. The answer is no.</p> <p>5 Q If the members of that gang claim that they had</p> <p>6 come to you and asked you to use the P car rather</p> <p>7 than doing the job manually, would you dispute</p> <p>8 that?</p> <p>9 A Yeah, because I just told you that Logan told me</p> <p>10 that he was not maintaining what they had been</p> <p>11 doing previously and that even Guillermo hadn't</p> <p>12 been on there that long. He was in a project in</p> <p>13 California where he wasn't on it really all that</p> <p>14 long, on the P car. And that's a different</p> <p>15 territory and a whole different track conditions.</p> <p>16 So Logan is the one who said he's</p> <p>17 missing a ton, because I was like well, wouldn't</p> <p>18 it be easier with the clipper/de-clipper. And</p> <p>19 Logan, having as many years he has on that gang</p> <p>20 was like no, he's missing stuff.</p> <p>21 And I've only got him there, you know</p> <p>22 what I mean, and I'm helping out, too, where I can</p> <p>23 without making it a safety hazard because, like I</p> <p>24 said, I have to have my head on a swivel for any</p> <p>25 other unsafe conditions. So no, nobody came to</p>	<p>1 jumped to conclusions.</p> <p>2 And like I said, you know, I'm trying</p> <p>3 to keep the moral of my gang that I have authority</p> <p>4 over, my subgroup, and it was unanimous that he'd</p> <p>5 have been better helping us back there.</p> <p>6 Q All right. Now, my question was did anybody use</p> <p>7 the P car on July 26th?</p> <p>8 A Yes.</p> <p>9 Q Who?</p> <p>10 A Guillermo and Logan.</p> <p>11 Q For what period of time?</p> <p>12 A Up until 9 or 10 when Guillermo went away. There</p> <p>13 was nobody else to even be on it. Then we were</p> <p>14 just bumping it up.</p> <p>15 Q And after Guillermo left was it used?</p> <p>16 A No. No. Going later in the day, no.</p> <p>17 Q Why not?</p> <p>18 A Because everything was moving a lot slower, and I</p> <p>19 wanted to keep the group together. We weren't</p> <p>20 laboring very hard at all, but -- especially with</p> <p>21 his conditions, we just all needed to stay</p> <p>22 together. I mean, I wasn't going to have him just</p> <p>23 sitting way up there on the machine without radio</p> <p>24 communication, so we all stayed together. We all</p> <p>25 went down the tracks together and we didn't -- we</p>
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<p>1 me. Actually, it was quite the opposite.</p> <p>2 Q Nobody came to you urging you to use the P car</p> <p>3 rather than have the men do the work by hand, is</p> <p>4 that what I'm understanding your testimony to be?</p> <p>5 A Yeah, I don't remember that. I do not remember</p> <p>6 somebody coming to me telling me that we need to</p> <p>7 use that P car.</p> <p>8 I had those guys trading out, but</p> <p>9 Guillermo had displayed that in his only --</p> <p>10 somebody else can run it. If somebody else came</p> <p>11 and said I'd like to run it and they did a good</p> <p>12 job, I mean, that's -- that's hypothetical because</p> <p>13 that didn't happen because we didn't have that</p> <p>14 many people there, but I'm saying that he, you</p> <p>15 know, he was not -- he was not contributing. And</p> <p>16 this is not when he was on break. This is like --</p> <p>17 It was like well, it doesn't seem like there's a</p> <p>18 reason to have somebody just bumping that machine</p> <p>19 up because that's the product we're getting.</p> <p>20 We kept going -- I mean, I went in</p> <p>21 front of him and I went behind him and seen that</p> <p>22 what needed to be happening there wasn't</p> <p>23 happening. The ties were not marked. And I</p> <p>24 understand how it works and what needed to be</p> <p>25 marked. I got a good understanding before I just</p>	<p>1 did not -- you know, we didn't work at a grueling</p> <p>2 pace, let alone -- We did more -- We did more</p> <p>3 breaktime than we did working.</p> <p>4 Q Okay.</p> <p>5 A It was a really bloody hot day out there.</p> <p>6 Q How would you characterize the weather on</p> <p>7 July 25th? And then I'm going to ask you about</p> <p>8 the 26th.</p> <p>9 A I mean, it was -- it was hot. That's all I can</p> <p>10 say.</p> <p>11 Q How about the 26th?</p> <p>12 A It was hot, and it was even a little bit more</p> <p>13 humid. It was pretty humid that day, from my</p> <p>14 memory.</p> <p>15 Q Forgive me. The -- The length of your answer</p> <p>16 confuses me a little bit. Tell me when and who --</p> <p>17 when the P car was used and by whom on July 26th.</p> <p>18 A Guillermo Herrera and Logan Newman were using it</p> <p>19 before -- before Guillermo said he was</p> <p>20 lightheaded, but the thing is, though, it was take</p> <p>21 as many breaks as you can.</p> <p>22 So if they did something, it might</p> <p>23 have been for a couple minutes, but I did see them</p> <p>24 use it a little bit, just piddle around with it.</p> <p>25 You know, I'm not -- I'm not going to micromanage</p>

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<p>1       them. I mean, I appreciate any extra effort, but  2       I did witness both of them operating it and  3       marking ties.</p> <p>4   Q   Were they using -- Is it your memory that they  5       were using the tie clipper and de-clip to clip and  6       de-clip ties or --</p> <p>7   A   No.</p> <p>8   Q   -- or clips? Is that what they were using it for?</p> <p>9   A   They were using it to clip ties. It doesn't have  10      the ability to unclip. And that's why he was  11      supposed to be marking things that we were going  12      to take care of as we approached it with that camp  13      car, but it wasn't getting done.</p> <p>14   Q   All right. Now, I asked you why you called Bobby  15      Herrera earlier when Mr. Herrera was having his  16      heat distress. Why did you not call an ambulance?</p> <p>17   A   I -- I want to say, and -- and it's only because I  18      want to say it, I can't remember, but, you know,  19      in that couple minutes, you know, I'm sure I asked  20      him, but I don't remember, but the way I gauge the  21      situation is that, you know, he's leaning up  22      against the machine, he's holding his own weight,  23      he's still able to talk fine, he's sweating, he's  24      making eye contact, you know, he looks tired, and  25      that's it.</p>	<p>1       little bit longer, I probably would have called an  2       ambulance.</p> <p>3   Q   All right. Was your gang undermanned on July 25th  4       and 26th?</p> <p>5   A   Yes.</p> <p>6   Q   Do you know what a full complement of employees on  7       a Quality Control or Cleanup Gang is?</p> <p>8   A   Is that Union Pacific terminology?</p> <p>9   Q   What -- Yeah.</p> <p>10   A   Whose terminology is that, a full complement?</p> <p>11   Q   When a -- When a -- When everybody that's supposed  12      to be assigned to a gang, the Quality Control or  13      Cleanup Gang, how many people are on that gang and  14      what are their jobs?</p> <p>15   A   It really depends on workload. If you got crystal  16      clear track, you go to where the work is. If you  17      got a lot of work, you get as many people as  18      possible back there. That's a full complement.</p> <p>19   Q   When they -- Do you know what a -- the full  20      complement on a Quality Control Gang is supposed  21      to be when the jobs are placed on the bid roster  22      or with Crew Management Services?</p> <p>23   A   That was my answer.</p> <p>24   Q   What?</p> <p>25   A   That it's according to the workload.</p>
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<p>1       I don't remember the exact words of  2       the conversation or, you know, he never -- I know  3       for sure he never said could you call an  4       ambulance, I know that, but I wasn't -- I  5       wasn't -- there definitely wasn't -- it didn't  6       appear to be something that he wished to happen,  7       but like I said, I can't put words in his mouth  8       and I can't say what I said to him being over a  9       year ago, but that happened the way it did for  10      that reason because it was custom to that  11      circumstance.</p> <p>12   Q   It was accustom to that circumstance?</p> <p>13   A   It was custom -- It was -- It was special to that  14      circumstance that he appeared like he was still  15      okay. He was not on the ground. He was not --  16      You know, his shoulders were down, but he wasn't  17      like passed out or anything. He wasn't like -- He  18      could still walk. He walked himself to the van.  19      It wasn't -- It wasn't a situation  20      where he alarmed everybody. He still was just  21      very -- He just looked tired. That's it, you  22      know. And so within two minutes he was gone.  23      I mean, it was -- so we're talking  24      about decision making within that two minutes, you  25      know what I mean. If he'd have been there just a</p>	<p>1   Q   On a day-by-day basis, or within the day?</p> <p>2   A   Yeah. On a day-by-day moment-by-moment. If we  3      run into a bomb, we're going to need more help.</p> <p>4   Q   Do you know how the UP lists the gang as a full  5      complement of employees?</p> <p>6   A   (Witness nods.)</p> <p>7   Q   No, okay.</p> <p>8   A   There was a lot of vacations.</p> <p>9   Q   Lot of vacations?</p> <p>10   A   Yeah, that's what it was. I don't necessarily  11      know that this full complement business is what --  12      what -- that they didn't have enough jobs there.  13      I just -- My understanding was that there was guys  14      on vacation.</p> <p>15   Q   And that's why your gang was undermanned?</p> <p>16   A   Yeah. Partially, I'm sure. When I say partially,  17      if there's any other reasons I wasn't aware of it.  18      I did know that. I remembered that because, I  19      mean, like I said, I know to know, you know. We  20      were behind, but we weren't working beyond our  21      means. I'm just like if you guys ever want to  22      catch up, you're going to have to send people back  23      here at the end of the day, or we're just going to  24      work at the pace we're going.</p> <p>25   Q   Okay. Now, let's -- tell me what it is that</p>

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1	concerned you about Guillermo Herrera to call --	1 So it was definitely nothing that I was going to
2	cause you to call Bobby Herrera.	2 push the envelope on, but I dug out some of those
3 A	That he told me he wanted to leave. That's what	3 ties with one of the surfacing guys at the time
4	concerned me. That's -- You know, that's like --	4 that we had that speed swing there and then
5	that was -- it was sad. It was sad because he was	5 de-clipping a little bit.
6	fine up until that point.	6 And then there was a couple things
7	That's what concerned me is that out	7 that the guys missed. Even that camp car, like
8	of nowhere, out of left field he's not okay. He's	8 there was a piece of steel stuck under the rail,
9	saying he feels weird. Physical, external	9 under the pad. And so I actually just grabbed the
10	indications, I didn't have any except to say that	10 tools myself and went back there and did, you
11	he looked tired.	11 know, because that's what I sign off on is the
12 Q	And where did you think Mr. Herrera was taking	12 quality control.
13	Guillermo Herrera when you put him in the van?	13 So there was a few things I did
14 A	I didn't know.	14 instead of saying, you know -- One time I made
15 Q	You didn't give it a thought?	15 them go back because I needed an automated piece
16 A	No, because like I said, he -- he looked tired.	16 of equipment. I could not get it. I tried. I
17	He said he needed to leave. He didn't say I need	17 had a jack and everything, but other than that, I
18	to go to the hospital, get me out of here. I	18 did the handwork myself back behind the gang, the
19	don't know what's going on. I mean, he was	19 stuff that they did miss, but it was pretty good
20	coherent and he said I just -- I want to leave,	20 quality, I will say that, that out of all falling
21	you know. And in two minutes, how much can you	21 behind and, like you said, people on vacations and
22	really talk about.	22 whatnot, I -- I was able to keep the quality
23	I really didn't give it a thought	23 pretty good. Sorry that was a tangent. I know
24	where he was going. I was just happy that he was	24 you're in a hurry here.
25	on his way to wherever it is he thought he needed	25 Q Were you demoted to -- or transferred to another
	Page 99	Page 101
1	to go. Honestly. He walked to that van.	1 gang after this incident?
2 Q	If, indeed, the P car was used some during the	2 A No. Absolutely not. No. I still have my
3	morning of July 26th, did its use stop and	3 assistant foreman qualification.
4	Mr. Guillermo and Logan Newman have to de-clip by	4 Q No, I mean within 8501. Did they transfer you to
5	hand?	5 another gang?
6 A	We -- Yeah, we pulled some -- we pulled some clips	6 A Oh, no. Oh, no. They didn't -- They didn't
7	off.	7 demote me. I was still an assistant foreman.
8 Q	We? Did you participate in the work?	8 MR. COX: Let's just go off the record
9 A	Only if it was safe to do so, but not -- I did a	9 a second. Let me look at my notes here.
10	little bit, yeah.	10 VIDEOGRAPHER: Time is 10:29 a.m.
11 Q	Tell me what a little bit means.	11 We're off the record.
12 A	Well, like digging those ties over when we were	12 (Recess taken.)
13	using the speed swing, I was in there digging.	13 VIDEOGRAPHER: Time is 10:37 a.m.
14	Guillermo got upset that we were in the five-foot	14 We're back on the record.
15	radius of the boom. And I said well, you know,	15 MR. COX: Mr. Nicholson, I don't have
16	policy is if we have an enhanced job briefing and	16 any other questions.
17	we all know what's going on, we can be in that	17 MR. SCHMITT: I will wait with my
18	five feet. And he was never even in it, but I had	18 questions until the time of trial. So we're done.
19	had that briefing with Logan.	19 VIDEOGRAPHER: This concludes the
20	So then he stepped aside. He didn't	20 deposition. The time is 10:37 a.m. We are off
21	even participate, he didn't feel it was safe, and	21 the record.
22	I didn't -- I wasn't going to argue with him, you	22 (The attorneys have standing orders.)
23	know. I didn't -- I was fine with that. And like	23 (At 10:37 a.m. the deposition
24	I said, we did more than breaktime than we did	24 concluded.)
25	working that day, so -- it was just an odd day.	

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1 STATE OF WISCONSIN )  
2 MILWAUKEE COUNTY ) SS:  
3 I, KIM M. PETERSON, CM, Registered  
4 Professional Reporter and Notary Public in and for the  
5 State of Wisconsin, do hereby certify that the deposition  
6 of SCOTT NICHOLSON, was taken before me at 207 East  
7 Michigan Street, Milwaukee, Wisconsin, on the 10th day of  
8 August, 2016, commencing at 8:02 a.m.

9 I further certify that I am not a  
10 relative or employee or attorney or counsel of any of the  
11 parties, or a relative or employee of such attorney or  
12 counsel, or financially interested directly or indirectly  
13 in this action.

14 In witness whereof, I have hereunto  
15 set my hand and affixed my seal of office on this  
16 18th day of August, 2016.

17  
18  
19 Kim M. Peterson  
20 Notary Public in and for the  
21 State of Wisconsin  
22

23 My commission expires March 17, 2018.  
24  
25